

No. 14201

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United States  
Court of Appeals  
For the Ninth Circuit.

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CHET L. PARKER and LOIS M. PARKER,

Appellants,

vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL  
WINANS, ETHEL WINANS, ROSS M. WINANS,  
AUDUBON WINANS and LINNAEOUS WINANS,

Appellees,

and

WALTER STEGMANN,

Appellant,

vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL  
WINANS, ETHEL WINANS, ROSS M. WINANS,  
AUDUBON WINANS and LINNAEOUS WINANS,

Appellees.

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Transcript of Record

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In Five Volumes  
Volume IV  
(Pages 1557 to 1896)

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Appeals from the United States District Court for the  
District of Oregon

MAY - 7 1954



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(Testimony of Walter Stegmann.)

Q. Yes, this is the same Saturday we are discussing.

A. If I did take any papers which I may have had a copy of the description on a piece of paper, I may have had that, but I never did have a copy of the deed on Saturday.

Q. You may have taken a copy of the description?

A. I may have because I had a copy of it in—I mean, Haynes and all of us were working on it. We had several copies, ten or [1637] fifteen, I think, I imagine, around there.

Q. When you left on the 8th, did you feel that that description was satisfactory?

A. Well, the description that I had, I thought was worked out satisfactorily.

Q. Well, did you feel that that description was going to be satisfactory to Mr. Chet Parker?

A. I thought it would be.

Q. Did it follow your understanding of the area he wished reserved?

A. What?

Q. Did it follow your understanding of the area he wished reserved?

A. Yes.

Q. The testimony here has been that you again came back to the office on Monday, the following Monday?

A. Yes.

Q. Did you have reason to discuss this matter with the Parkers on Sunday?

A. I don't know as I discussed it with them or not on Sunday. I don't know whether—no, I didn't discuss it with them on Sunday unless it was—un-

(Testimony of Walter Stegmann.)

less I happened to give Mr. Parker a copy of that description, but I don't know.

Q. Are you speculating on that? Do you remember what happened on Sunday? [1638]

A. I don't remember exactly what happened on Sunday, no.

Q. Will you tell us, then, when you next returned to Vawter Parker's office on Monday?

A. I don't remember what time it was when we got there. I believe it was in the morning in Vawter Parker's office, but I know we had to go back there to finish up this description in the deed.

Q. Now, you say you had to go back to finish up the description in the deed? A. Yes.

Q. The description as you had it when you left Saturday night you said was satisfactory. What more remained to be done?

A. I thought the copy of it I believe I had was satisfactory, but it seems like it had to be typed back on to the—I mean, I don't believe they had it made up in deed form. It was on a deed that was just a copy, and it seemed like Winans wanted some additional land up there, and that had to be added on, and that he wanted reserved out, some additional land.

Q. This subject, did it come up on Monday?

A. Well, I think he mentioned it. It could have been mentioned on Saturday that he did want some additional, but he was not sure, and then——

Q. Now, what happened there, I mean, at the

(Testimony of Walter Stegmann.)

discussion, then, with Mr. Parker, Chet L. Parker, or what was the situation?

A. Well, they did, I think they discussed this out there when [1639] they were setting out because I had surveyed up a little ways first how it would come out approximately if he did want some more land, and then we didn't set the stake out there to contain this additional land. I think we made just a rough survey out there to see where it would be, and I think during the course of their conversation or talk, Mr. Parker had been talking with Mr. Winans, I think it was on the day they were up there, Saturday, how this reserved area, that if Mr. Winans did want this additional area, why, he could have it, let him have it as long as it didn't take in too much timber there, if he could keep all the good timber, and it seems like they had agreed on it, so Winans wanted this additional area, and it had to be set out in the reserved.

Q. Now, this problem didn't come up until Monday, or had it been discussed on Saturday?

A. Oh, I think it had been discussed. It may have been discussed a little on Saturday, but Winans didn't know for sure whether he wanted it that day or didn't want it that day.

Q. Did he bring that up when you came in Monday into Vawter Parker's office, bring up that subject?

A. Well, yes, I believe it was that day. He decided on Monday, then, he was going to make up his mind whether he wanted or didn't want it, and then

(Testimony of Walter Stegmann.)

this additional area had to be set out, the lines had to be changed slightly. I don't remember exactly how they had to be changed, but they had to be changed a little [1640] to take in more ground.

Q. Did you participate in setting this out? I mean, did you help in working out that?

A. Yes.

Q. That was part of your work there?

A. That was part of my work.

Q. Who else was present on Monday?

A. Mr. Winans and Vawter Parker were the only ones there on—yes, they were the only ones.

Q. What happened to Mr. Haynes?

A. He was not there Monday.

Q. He was not there Monday?

A. Not that I remember.

Q. When this subject came up about the additional land, did Mr. Winans seem to know the additional amount required to pay for it?

A. It seems like this had been discussed, too, that they—it seemed like he had kind of an understanding how much he was going to have and how much it was going to be.

Q. Was the amount discussed with you?

A. Oh, it may have been—I don't remember them discussing—him and Vawter Parker may have been figuring on it, but I am not too sure. They arrived at a certain amount, but I know they wanted, he wanted some additional acreage, and it was approximately where I had surveyed, I had

(Testimony of Walter Stegmann.)

tentatively surveyed it out, [1641] and that was agreed on that he would take that.

Q. Was it your understanding at the time and his understanding at the time that the reason you would make that additional survey of the property to include it in the reserved area was because it met with the agreement of Mr. Chet L. Parker?

A. I am sure that they had agreed on, Mr. Chet Parker and Mr. Winans had agreed on that before because I remember Chet Parker saying that if he wanted this additional land, why, he could go ahead and take it because, as I remember, if it didn't take in any trees to amount to anything, and I had kind of surveyed it off a little there, and I knew approximately where it went, so it didn't take in much valuable timber.

Q. Did setting this description to rights take some considerable time on this day?

A. Well, seems like it took quite a bit of time because I believe it was before dinner——

Q. By dinner, do you mean lunch?

A. Or lunch, I mean, it was probably before twelve o'clock that we went there. That was Mr. Winans and myself, and it seemed like a lot of writing and rewriting on descriptions so to get it started in there and then read it over again, and it was wrong, so go back and rewrite it again, and we were working out, and it seemed like quite a problem to set out this reserve.

Q. Was there any discussion about going over to the Title and Trust Company? [1642]



(Testimony of Walter Stegmann.)

A. Well, as I think, there was some discussion on that. He wanted to—he said to go over, to either call up the title company—I think that was on Saturday that he wanted to call up the title company. That is when Mr. Haynes and I was there.

Q. Was that on Saturday?

A. I believe it was. I am not positive, but I am sure it was.

Q. It might very well be? Would you give your version of that, please?

A. Well, I told him that he could go ahead and call them up if he wanted to, but I could see no reason for calling. I understood they were an insurance company, a title company, but if he wanted to call someone, Haynes and I was there setting out this property and we were surveyors—I am not a very good surveyor but he was supposed to be a good surveyor—and how could an insurance man help in assisting us setting out the property. If he wanted to get someone that had knowledge, get the engineer to set it out, that I had no objection to him calling the man. The only thing I couldn't see, why, he was going to get—if he wanted to get someone more experienced than we were, get a good engineer.

Q. Who were you referring to?

A. I was referring to Vawter Parker calling up this title insurance man.

Q. Did you mention going to some Government office to use their equipment, something like [1643] that?

A. Well, no, I said if he wanted to call up any-

(Testimony of Walter Stegmann.)

body, why, I didn't care if he called him up, but what I suggested to call up would be the County Engineer or some engineer that understood surveying.

Q. When did you finish your work there on Monday?

A. Well, it seems like it was about closing time, I mean, as everybody was getting kind of anxious to leave. I didn't know, I don't know whether it was four o'clock or four-thirty or whether it was——

Q. Was there any discussion that you recall, in your presence, regarding the form of deeds to be drawn?

A. Well, I never paid any attention to it, and it really wouldn't—I wasn't interested in that because Mr. Parker——

Q. That is not my question. I mean, was there any discussion in your presence regarding how the deed was to be drawn?

A. Well, I don't remember any discussion on that.

Q. Were you ever—did you make any inquiry, or did they ask you any questions about whose name should go on the deed?

A. Well, yes, I guess they did when they were drawing up the deed ask whose name they should put in there, and I told them I thought, or I knew, Mr. Winans knew that Chet Parker was buying the property, but I told them I didn't know whether Mr. Parker, Chet Parker, wanted his name or his

(Testimony of Walter Stegmann.)

son's name or his—their, oh, business name, or—I didn't know whether—they hadn't told me whose name they had wanted to put in. [1644]

Q. Did you have an arrangement to meet Mrs. Chet Parker this day?      A. On Monday?

Q. Yes.

A. Well, there was no exact arrangement that I knew of, only that Mr. Chet Parker told me when I had seen that reserved area was set out properly in the deed, why, Mr. Abraham was supposed to do the closing for—I mean as to pass his opinion on it and take it over to him, and that was all I had to do.

Q. Did you receive a final copy?

A. On that Monday evening, why, I received a copy of the deed. I never paid any attention what the wording in the deed was, and I did notice that the description of the property was right in that the reserved area was right, as near as I knew, and the way it had been staked out, why, the description was set down properly.

Q. Who gave you that copy?

A. Vawter Parker gave me that copy.

Q. Was Mr. Winans there at the time the copy was given to you?

A. I don't know. I believe he was, but I am not sure. He was in and out quite a bit, too, at the time and Vawter Parker was drawing up this deed.

Q. Now, any time on this day, this Monday that you have been just discussing, did Mr. Paul Winans



(Testimony of Walter Stegmann.)

mention to you, or discuss with you, the state of the title to this property? [1645]

A. I don't recall any. If there was, all I ever understood or heard, that Ethel Winans, his sister, had a deed to the property and that at one time they had title insurance—a title insurance policy, and that was all I knew.

Q. You say at one time. Now, I am talking about this day now. I am not asking as to what transpired beforehand. I am asking about the 12th day of September—10th day of September, rather, Monday.

A. Yes.

Q. Did Mr. Vawter Parker or Mr. Paul Winans discuss the state of the title to this property with you?

A. I don't remember of any discussion with me at all.

Q. Was there any discussion, though?

A. No.

Q. Did you overhear, or did there ever take place in that office on either of these two days any discussion about that deed, whether the deed should be in any form, in any legal form, or what type of deed was to be given?

A. Well, I don't remember any. If they would have been discussing, I didn't pay attention to it because Mr. Parker had told me to take the deed, when I got a copy of the deed to take it over to Abraham's office, and he was the one that was supposed to look at it, so it didn't interest me at all what kind of a deed they were writing.

(Testimony of Walter Stegmann.)

Q. I appreciate that it wouldn't have interested you. I want [1646] to know if they discussed it with you?      A. No.

Q. When Mr. Parker handed you the deed, can you recall what he said to you, or did he just hand it to you?

A. I think he just handed it to me and said, "Well, here is the deed," I think, "a copy of it."

Q. Did he know at that time that Mr. Abraham was going to check the deed?

A. I don't know as he did, or as I ever told him, but I told him that I am sure they wanted—well, I was to take it over and they were going to have their attorneys look at it.

Q. You said they were going to have their attorneys look at it?

A. I may have said that, but I am not sure.

Q. I don't want you to say something you may have said. It is what you remember. If you do not remember, of course, that it another matter.

Was there any discussion about you coming back there the next day, the Tuesday following the Monday?      A. No.

Q. Was it your understanding that you were not to come back?      A. On Tuesday?

Q. Yes.

A. Well, after I had seen that the lines were properly described in the deed, why, that was all my job. I didn't have nothing more to do with it, so there was no reason for me to come back. [1647] I was finished.

(Testimony of Walter Stegmann.)

Q. Did you say that to Mr. Vawter Parker?

A. Well, I don't know as I did. I can't recall. It is possible that I did; it is possible that I didn't.

Q. Did you next go over to Mr. Abraham's office?

A. You mean when I got the copy of the deed?

Q. Yes.

A. Yes, I took it over to Mr. Abraham's office.

Q. Before we leave Vawter Parker's office on Monday night, there has been some testimony from Mr. Parker, I believe, that you went out of the office a number of times. He did not follow you. Were you in and out of the office for any purposes on Monday?

A. Why, I don't—I did probably while they were typing up copies, why, I may have went out for a cup of coffee, or it seems like at times I think everyone had went out a time or two for coffee. I am not sure that—Winans was in and out quite often and I think I may have been once or twice. I am not sure.

Q. Would you have had any reason to consult anybody? Mrs. Parker, say, or anybody outside that day, or did you?

A. Well, I didn't consult with anyone, and I didn't have any reason to consult with anyone because I knew the description of the property that was being reserved.

Q. You went over to Mr. Abraham's then. Was Mr. Abraham's secretary there, or did you have to

(Testimony of Walter Stegmann.)

go in and get Mr. Abraham, or how did that work out, please? [1648]

A. Well, I don't remember. It seems like his secretary was there.

Q. Did you meet Mrs. Parker——

A. When I went in the door, Mrs. Parker was there, and I was to deliver the deed to Mr. Abraham, but when I went in the door, why, Mrs. Parker was there and I think Mr. Abraham's secretary was there, and I give the deed to Mrs. Parker, and I don't know whether the door to Mr. Abraham's office was open or not. It seems like his door and the reception room kind of joined, as I remember. I am not too sure of that. I told Mrs. Parker that to my knowledge the description was in the deed correctly and as near as the reserved area had been staked out, and that was all I knew I was sure that was right, and I was done with it.

Q. Did Mr. Abraham overhear this, or was that a conversation——

A. I don't know whether he heard anyone talking or whether he opened the door or come out or whether he was in the doorway. I am not sure he——

Q. Were you in the corridor there between the counter and the doorway—are you familiar with Mr. Abraham's office?

A. I have been in there once, I believe it was, as I remember.

Well, it seems like his—we may have been right in the door. I am not sure whether he opened the

(Testimony of Walter Stegmann.)

door and was listening there or not. I am not sure.

Q. You gave the deed to Mrs. Parker?

A. Yes, I handed—— [1649]

Q. By the deed, I mean this copy you had?

A. The copy of the deed I handed to Mrs. Parker.

Q. Did she give it to Mr. Abraham?

A. I think she took it from me, and she may have—Mr. Abraham may have been there. I believe he did step out the door, or was there, or Mrs. Parker stepped in the door and handed the deed to him, or she had the deed. I am not sure, but I did—all I did was give the deed to Mrs. Parker. I said, “To my knowledge I am sure the lines of this reserved area are correct and they are right,” and that I was finished with it, that I was done.

Q. Were you introduced to Mr. Abraham?

A. I don’t remember ever being introduced to him.

Q. You do not?           A. No.

Q. Did you leave then?

A. I think I left right then.

Q. Did you leave alone?

A. Well, he was, it seemed like, kind of anxious to get out. Now, I don’t remember whether he come down out right away or not, but it seems like I left alone before anyone else did.

Q. You did not return to Hood River or have anything further to do with this transaction then on the next day?           A. No.

Q. Now, in your contacts with Mr. Paul Winans



(Testimony of Walter Stegmann.)

prior to obtaining the option from Mr. Winans and Ethel Winans on August 11th, [1650] did Mr. Winans ever at any time offer you the Government's exhibits, Lots 1 and 2, as separate parcels of land?

A. No, I always considered them as one piece. That was always one tract of land.

Q. During all of your discussions with Mr. Winans, was there ever any occasion when he separated the values as to two parcels of land, Government Lot 1 and Government Lot 2?

A. You mean that I knew where he separated each one?

Q. In his asking price from you for the lands, did he ever separate the two lots as to value?

A. No, he always had—the price was set on, as one piece of land.

Q. And after hearing the testimony of Mr. Winans here, it is your recollection, your testimony, that it was always a price as on one piece of land?

A. That is the way I always understood it was, as being priced as just one piece of land, one parcel.

Q. I believe that you have been questioned on this before, Mr. Stegmann, and you have also had an opportunity to hear the testimony of Myron Parker.

Did you at any time go into the office of The Title and Trust Company in Hood River and speak with Miss Vose, who testified here that she believed she saw a man that looked like you come in and ask about a policy for Chet Parker?

(Testimony of Walter Stegmann.)

A. No, I have never been in the title office in Hood River. [1651]

Q. Did you at any time, and particularly on the time testified to by Mr. Miller, accost Mr. Miller on the street in Hood River and question him as testified?

A. No, I never did. The first time I ever seen Mr. Miller that I can recall was here in this courtroom. [1652]

\* \* \*

Q. Is this the Pea Vine property that you purchased for \$3,000? A. Yes.

Q. And you sold the rights to log it for \$3,000?

A. Yes.

Q. Now, on that occasion, would you tell us whether at that time Mr. Parker, Mr. Chet L. Parker, was one of the adjacent property owners?

A. Well, I didn't know whether he owned property, owned the land, or owned just the timber rights on it, but I did understand that he had that timber adjoining my property after I had bought the property up there. The fact is, I was kind of interested in that property myself, is one of the reasons why—the timber on it—and then I heard from some loggers or something that Parker had purchased this timber. Whether he owned the land at that time I am not sure, but Mr. Wardell—there were a few trees there standing on this adjoining property that would be east of my property at that time, and he was wondering who owned the prop-

(Testimony of Walter Stegmann.)

erty there, and I says, "Well, I don't know who owns the property, but I think Mr. Parker has purchased the timber." Well, he says, "It looks like there is some logs there," or something to that effect. He acted like he may have been a little interested in it, and that is why I—all I told him about it.

Q. Your purpose for taking Mr. Wardell up there was solely for yourself to sell your own property, your own benefit?

A. It was solely for my own benefit, was to take him up there to [1655] show him my property because I didn't know whether—nothing about this adjoining property, only that Mr. Parker had bought the timber. Whether he still was going to take some off or whether he had—I just took Mr. Wardell up there to show him what salvage property there was on my property.

Q. Did this question regarding the Parker property come up in the conversation?

A. He asked me if I knew who owned those few trees standing there. I told him, "I believe Mr. Parker owns them."

Q. Did you tell him you did not own it?

A. I told him I didn't own it. I told him that was not my property. I showed him where the fence line of my property ended.

Q. Did Mr. Chet L. Parker ever hire you or have any dealings with you or tell you with regard to showing Mr. Wardell this property?

A. Never did.



(Testimony of Walter Stegmann.)

Q. Never did?           A. No.

The Court: We will adjourn until ten o'clock tomorrow.

(Evening adjournment taken.) [1656]

February 10, 1953—10:00 A.M.

WALTER STEGMANN

recalled, testified as follows:

Direct Examination

(Continued)

By Mr. Ryan:

Q. Would you hand Mr. Stegmann Exhibit 26, please?

Mr. Stegmann, you are looking at Exhibit 26, which has already been entered in evidence in this case, and yesterday I handed you what purported to be a photostatic copy of that Exhibit 26. Can you identify that exhibit, Exhibit 26?

A. Yes; this is a Notice of Election to Purchase and an acknowledgment of Notice of Extension of Time to reserve out the reserved area and stake out the——

Q. Is that the original instrument from which the photostat you were testifying yesterday was taken?           A. Yes, I am sure this is.

Q. Does your testimony relating, given yesterday relating to the photostatic copy apply to the original instrument?           A. Yes.

Q. Mr. Stegmann, there was testimony given

(Testimony of Walter Stegmann.)

here by a Mr. Parman which you heard regarding some property on Gale's Creek, down in the Gale's Creek area. Would you give us your recollection and [1657] understanding of that transaction?

A. Well, I had a chance to purchase some timber from a man by the name of Lessard, and I have tried to locate him but I have not been able to find him. He has moved to Washington, I think, and where I don't know. He said he would sell it to me for a certain amount of money. I don't recall the exact figure. I happened to get in contact or run into this Mr. Parman. I don't remember how we came together, but I took him up to show him this property and asked him what he thought it was worth and what he might pay for it, at Gale's Creek, Oregon.

Q. Did you have any interest in the property at that time?      A. Well, how do you mean?

Q. Had you purchased any interest in the property at that time?

A. No, I hadn't purchased any, only the verbal agreement with this man that he would sell it to me for a certain figure.

Q. Do you remember what that figure was?

A. I don't remember the exact figure. It seems like it was eighty or a hundred thousand dollars, something like that. It was up in there pretty close.

Q. How was it going to be sold, by actual cash payment or by so much per thousand, or what was the——

A. Well, he wanted an offer made on it. He

(Testimony of Walter Stegmann.)

would take a down payment and then so much, the rest of it by the thousand, but he had not made any exact statement. He wanted to know what it was possible to do. [1658]

Q. Now, Mr. Parman was under the impression that this property was owned, with the exception of two forties, by the L. H. & L. Lumber Company. Do you know what Mr. Lessard's interest in this property was?

A. No, I don't, only that Mr. Lessard told me that he owned some rights in there and that timber he owned—he didn't own the lands, but he had the rights to buy the timber, and it had to be taken off in a period of a few years. I don't remember the exact amount of years, but there was a time limit on it that it had to be taken off. I understand he didn't own all the land. He owned some of the land, I think, but the rest of it he had the timber contract on.

Q. Did you know that the L. H. & L. Lumber Company owned this property?

A. No, I did not.

Q. Did you know at the time that Mr. Chet L. Parker owned some of the property?

A. No, I did not.

Q. What was the extent of your showing of this property to Mr. Parman?

A. You mean how long I took to show him?

Q. Yes. I mean what did you do to show it to him?

(Testimony of Walter Stegmann.)

A. Well, I don't exactly remember all the time that was spent up there. I took him up and showed him approximately where the property was, and I showed him a map. I think I had a map at [1659] that time that Mr. Lessard had given me of the descriptions and I give them to Mr. Parman and he was going to have his cruiser or somebody else's cruisers make a further check on it for him.

Q. Did you see him again about that deal?

A. No, I didn't see him again. It seems like quite a bit later he called me up and he wondered if it was still, if he was still able to purchase it, and during that time Mr. Lessard told me he had sold it to somebody else. He didn't wait. He got tired of waiting for me and he sold it.

Q. Did Mr. Chet L. Parker ever communicate with you regarding this property?      A. No.

Q. During the course of your negotiations to purchase the option from Winans for this property, and during the period subsequent to that and in which you sold the option to Mr. Chet L. Parker and did surveying on that property and worked to set out the reserved area, a period which ended, according to your testimony, on Monday evening, September 10th, did you at any time have knowledge of the fact that Chet L. Parker had purchased or was negotiating to purchase a policy of title insurance from the plaintiff, Title and Trust Company?

A. No, I did not.

Mr. Ryan: Your Honor, it is my understanding that both the plaintiff, Title and Trust Company,

(Testimony of Walter Stegmann.)

and defendants Winans are willing to stipulate that in the event that the Court finds that [1660] defendant Stegmann is entitled to attorneys' fees from either of those parties, that the Court may assess said attorneys' fees.

The Court: Very well.

Mr. Ryan: Without the necessity of any evidence; is that correct, gentlemen?

Mr. Krause: We agree to that.

Mr. Buell: We understand that you propose to advise the Court just generally what the services have been.

Mr. Ryan: Yes.

Mr. Buell: Without necessity of taking the witness stand or anything like that.

Mr. Ryan: I, personally.

Mr. Buell: That is what we understand.

The Court: Yes, that is what your agreement was made yesterday in connection with Mr. Jaureguy's offer, that if I found in favor—that the Parkers are entitled to attorneys' fees, we will call Mr. Jaureguy up here and he will generally outline the services that he performed. The same applies to you.

Mr. Buell: That is correct.

Mr. Ryan: I have no further questions.

The Court: Mr. Jaureguy?



(Testimony of Walter Stegmann.)

Cross-Examination

By Mr. Jaureguy:

Q. On this Gale's Creek property that you showed that man who [1661] was a witness, Parman, or whatever his name is, do you know whether Chet Parker owned any of that property?

A. Well, I am sure that Mr. Lessard said he owned what property was owned there, and that I never did hear Mr. Parker's name mentioned that any property was owned there.

Q. Do you know whether he owned any of it?

A. No. [1662]

\* \* \*

Cross-Examination

By Mr. Krause:

Q. Mr. Stegmann, do you recall the time when you were in Vawter Parker's office on the Saturday when you were getting the description out and getting the deed written up? Did you say that you took a copy of the deed away with you that night?

A. I don't think I took a copy of the deed away. I think it was just a kind of a rough copy of the reserved area that was set out. [1666]

Q. Do you remember what provision had been put in there regarding the width of a right-of-way to get to the reserved area?

A. Well, I don't know whether they arrived—on that day whether they had arrived at a—had

(Testimony of Walter Stegmann.)

got that far to even talk about their right-of-way out through there.

Q. Well, how much of a right-of-way was finally provided? How wide a right-of-way was finally provided to get the—to get to the reserved area?

A. I don't remember now unless I had something to refer to.

Q. Do you recall whether it was 25 feet; that is, 12½ feet on each side of the line?

A. Well, I don't remember the exact figures.

Q. Do you recall that you earlier had been talking about a 40-foot right-of-way and that on Saturday the deed that you had, provided for a 40-foot right-of-way?

A. Well, I don't remember whether they—it may have been discussed, but I am not sure whether it was even talked about on Saturday.

Q. Didn't you, after taking that copy of the deed away with you providing for the 40-foot right-of-way, when you returned on the following Monday you objected to that width of the right-of-way, had it cut down to 25 feet; do you recall that?

A. I don't remember that. If there was any discussion on the 40-foot right-of-way I think it was probably—I discussed it all along. It had been too wide. [1667]

Q. How many times did you meet Ethel Winans, Mr. Stegmann? That is the sister of Paul Winans.

A. Well, I am not exactly sure. Probably two or three times, probably.

Q. What were the first times?

(Testimony of Walter Stegmann.)

A. The first time, I believe, was when she signed the option.

Q. That was on August 11th?

A. Well, that was on a Saturday. I guess that was August 11th.

Q. Saturday, August 11th? A. Yes.

Q. Where did you go to see her that morning?

A. She was in her house, I believe it is, or a big house that is back of the office there where Mr. Winans had his little office.

Q. That was her home where you went to see her?

A. Oh, I don't know. She was there. I guess it was her home.

Q. And you and Paul Winans went there, did you?

A. Well, yes, he took—I went with him.

Q. Was there any discussion as to the sale of the property between the three of you?

A. All I can remember is that I was introduced to her and that Paul Winans said that I was the man that had purchased the option or he had sold the option to, and that she had to sign it. We were not there very long.

Q. Didn't you and Paul Winans call on her there before any part [1668] of the option had been written?

A. I don't believe so. I am not sure, though.

Q. There was a discussion there at that time regarding the pieces of property, the forty acres, and



(Testimony of Walter Stegmann.)

the property adjoining the land? You don't recall it?

A. I don't recall that discussion.

Q. Was there a discussion there between the three of you as to the amounts that you were paying for the two different tracts?

A. All I know is that when I purchased the option is that I was to pay so much for the whole property. It was always considered as one property that I know of, you see, one piece of land.

Q. Well, finally there was a hundred thousand dollar price fixed for the two pieces; that is correct, isn't it? The option provides for one price for the two pieces?

A. Yes.

Q. But what I am asking you about is whether you discussed prices applicable to the two different pieces before the option was signed, between Paul and you and Ethel?

A. I can't recall any discussion at all.

Q. You don't recall a discussion that you had agreed to pay \$80,000 for the waterfront property and \$20,000 for whatever interest the Winans had in the forty acres?

A. All I ever considered was that it was a hundred thousand dollars for the—all the property they had there except the [1669] reserved area.

Q. Mr. Stegmann, we might agree that that is all you ever considered, but my question was whether there wasn't a discussion between the three of you in which \$80,000 was put on the one property and \$20,000 on the other?

Mr. Jaureguy: I think perhaps I should have

(Testimony of Walter Stegmann.)

said before, we had an agreement with respect to questioning of this witness by others, but I want to object to all the conversations of this witness insofar as they may be offered against Parkers on the grounds not binding on this witness and purely hearsay, and I wonder if I may have that without the necessity of rising and interrupting——

The Court: I thought you had it all the time.

Mr. Jaureguy: I was under the impression I had, but then I got to thinking it might not just cover it.

The Court: Mr. Stegmann, the thing that Mr. Krause is asking you is to answer his questions. If he asks you about a conversation, tell him that you either had the conversation or that you didn't or that you don't remember, but don't tell us something else.

Read the question, please.

(Last question read.)

The Witness: Well, there never had been a discussion on that.

Q. (By Mr. Krause): Now, Mr. Stegmann, I am not quite clear now [1670] as to whether or not you admit that that was your signature on the yellow copy of the Election to Purchase or not. Do you want to see it again?

A. I have seen it, and I cannot recall ever signing that, but it looks so much like my signature I wouldn't say that it wasn't.

(Testimony of Walter Stegmann.)

Q. That is as far that you will go is that you won't say it is not your signature?

A. I am not sure that it was or wasn't. I do not recall signing it.

Q. Had you noticed that you did not sign any of the ribbon copies of either one of the two papers that you signed there, either the option or the Election to Purchase, that you left your signature off of both of those papers; whereas you did sign the copies that Mr. Winans retained?

A. What was that again? I don't understand your question.

Mr. Krause: Could I have those two? Three hundred seven and twenty-six are the two.

The Court: I believe the witness does not understand "ribbon copy." If you tell him that was the original, he will understand what you are talking about.

Q. (By Mr. Krause): There were two copies signed, Mr. Stegmann. One was a white copy, and one was a yellow copy. Might I approach the witness, your Honor?

Mr. Jaureguy: That is 26.

Mr. Krause: This is 26 and 307. Now, I hand you 26. That [1671] is what you call the ribbon copy. You might call it the original.

A. Well, yes, I would say.

Q. Here is a carbon copy that has all of the signatures on it. You notice that in the—on 26 you did not sign up here in the place provided for in the Election to Purchase. Now, on the original option

(Testimony of Walter Stegmann.)

there is a photostat, Exhibit 327, of the original option. There is a line down here for Approved. That is a photostatic of the ribbon copy or the original. Here is Mr. Winans' copy, Exhibit 305, which you also signed; did you not?       A. Yes.

Q. And you did not sign your own copy?

A. Well, I didn't think it was necessary to sign the copy of that.

Q. You did not think it was necessary to sign Exhibit 26?

A. Well, I signed down here (indicating).

Q. Yes, you signed on the Extension of Time?

A. Yes. [1672]

\* \* \*

### Cross-Examination

By Mr. Strayer:

Q. Mr. Stegmann, can you fix the approximate time when you were first in the Parkdale Ranger Station?       A. No, I can't.

Q. Was it in 1951?

A. Yes, I am sure it was in '51.

Q. Was it before this Winans transaction had come up?

A. Well, it was—it could have been possibly before.

Q. Well, you mentioned that you had a Mr. Marsh with you. Is that the Mr. Marsh from whom you were trying to purchase some timber?

A. No, that was some relation to him.

Q. What was his full name; do you remember?

(Testimony of Walter Stegmann.)

A. That was with me? [1674]

Q. Yes. A. Floyd Marsh.

Q. You have no way of telling whether that was before or after the Winans transaction?

A. I can't—it was probably in about the same time. I am not sure because I was up in that area right, or in about that same time buying timber in there.

Q. Well, what is Mr. Floyd Marsh's business?

A. Well, they, ranching is their business, his business.

Q. He raises cattle? A. Yes.

Q. Do you remember talking with Mr. Petersen in the Ranger Station when you were there with Mr. Marsh?

A. I don't recall his name, but I talked with somebody there.

Q. You saw Mr. Petersen when he testified the other day?

A. Well, yes, I seen him, but I couldn't remember him exactly, being dressed different in ranger clothes.

Q. You didn't recall him as the man with whom you talked on that occasion?

A. No, I am not sure.

Q. Well, did you talk with Mr. Petersen about finding some grazing land at that time?

A. About finding some?

Q. Yes.

A. Well, I had already found it. [1675]

Q. What was that?



(Testimony of Walter Stegmann.)

A. I had already found it.

Q. What was the purpose of you and Mr. Marsh going to the Parkdale Station?

A. This piece of property up there had a lot of grazing land on it, and it had some timber on it, and I——

Q. Pardon me, which property are you talking about now?

A. This was a piece of property, would be north-east of Hood River. I believe it was kind of towards Mosier, and I don't remember the man's name that did own it, but he was about to lose the property, and Marsh wanted, Floyd Marsh wanted it for grazing land, and him and I were going to purchase it together if I could buy the timber on the property. It had some timber on it. Then I understood that the county owned the timber, and looking into it further—or the Forest Service, so that was the reason for us going to the Ranger Station and asking whether it would be possible to purchase that timber on the property.

Q. Is Floyd Marsh a resident there at The Dalles or around The Dalles?

A. Well, yes, I believe he is around Mosier and The Dalles part of the time.

Q. He is pretty well known up in that country, is he?

A. There is quite a few Marshes up in there. He seemed to be well known up in there.

Q. Is it your testimony, you say, that on August

(Testimony of Walter Stegmann.)

13th, the day [1676] that you took Mr. Parker to the property, you did not go to the Parkdale Station?      A. Yes.

Q. And you did not talk with either Mr. Petersen or Mr. Parrott?

A. I don't recall. I don't recall going there. I am sure I was not there.

Q. Now, on August 14th, that was the day that you went up with Mr. Kenny, I believe, to the Lost Lake property?

A. I don't remember whether it was the 14th or the 15th. I am not sure, I mean, whether it was that Tuesday or Wednesday, whichever day it was.

Q. Whatever day it was, either the 14th or 15th, Mr. Parker had asked you to go up there and show the property to Mr. Kenny, as I understand it. Now, I wish you would tell us just what you and Mr. Kenny did when you went up there.

A. Well, I took Mr. Kenny up there and I showed him where the tag was. Along the trail there is a Government tag, a board on a tree, as I remember it.

Q. What does the tag show?

A. Well, it show, I think it is the township and range and section.

Q. Is that a corner marker, you mean, a tag showing where the corner is?

A. It shows, it tells the approximate distance to the corner, and then the line is placed from there going, would be going west. [1677]

Q. Would that be toward the lake?

(Testimony of Walter Stegmann.)

A. What?

Q. Would that be toward the lake?

A. No, it would be going away from the lake.

Q. Away from the lake?

A. And it runs, the place runs right up and past—there is another quarter section corner there, a Government corner, and it has an iron pipe with a brass cap on it, and we started approximately—I showed him where that was, see? He was familiar with the property. I mean, there was one corner of the property.

Q. You mean you took him over to this brass-capped quarter corner marker?

A. Yes, and I told him where I had went, approximately. I had my pocket compass with me, which I usually do when I am in the timber, and I probably used the compass to point out the directions and showed him approximately where I went, and we may have walked out through there a little. I don't remember.

Q. Wait just a minute. What do you mean you showed him where you went? Where you went where?

A. Well, when I looked at this property before I purchased an option on it, I had walked around through this timber up there to get an idea of whether there was, how much was on the property, and I had showed him approximately where I had went and I suppose we discussed the type of timber, then, like you ordinarily do when [1678] you are out there.



(Testimony of Walter Stegmann.)

Q. Well, now, then, what did you do?

A. I just showed him approximately where I went, and I used the compass probably in the direction because I usually do because it is confusing in the timber if you do not have something to direct you with, and we may have walked around, but I don't remember just how much time I spent up there with him.

Q. Well, did you show him where the line was between the Lot 1 and the back forty?

Q. No, I did not. I just showed him where the quarter corner was, and I don't know whether he had a Metsker map with him, and he could determine that if he wanted to. I am not sure.

Q. Did you help him on his cruising?

A. Well, I showed him approximately where I went. Now, whether that was the extent of his cruising or whether he made further cruising, I don't know, and I believe that I took him down on the trail and pointed out the approximate area that I was supposed to survey off for Mr. Parker and for this reserved area so that he would not include that in his——

Q. May I have Exhibit 116, please?

The Court: We will take a recess.

(Recess taken.)

## WALTER STEGMANN

recalled, testified as follows:

By Mr. Strayer:

Q. Mr. Stegmann, I will hand you Exhibit 116, which is Mr. Kenny's map concerning his cruise of the Lost Lake [1679] area. Maybe that will help us to talk about what you did on that day. That area that is marked "Reserved Area" on the exhibit, is that approximately where—approximately the area that you pointed out to Mr. Kenny?

A. I think it is, probably. I pointed out approximately what Paul Winans said that he wanted to reserve at the time that I got his option. They wanted to reserve and he told me approximately where they were going to take it, and that is the reserved area I think I pointed out.

Q. In pointing that out to him, did you walk down in that area or did you point that out from some other place?

A. Well, I believe it is possible that we walked, Mr. Kenny and I walked down this trail.

Q. Well, the trail you are referring to is marked with a dotted line on this exhibit with the word "Trail" on it; is that right?      A. Yes.

Q. It follows the general meander line of the lake?      A. It follows it generally.

Q. You think you walked down that trail and pointed out that general area to Mr. Kenny?

A. Yes, that is what I think. That is, I don't remember clearly, but I mean, that seems to be what I did.

(Testimony of Walter Stegmann.)

Q. The corner that you say you pointed out to Mr. Kenny, is that the quarter corner there that divides Lot 1 from the back forty on the north line? [1680]

A. Yes, that is the corner there of the line between the two lots.

Q. That is the one that you pointed out to him where the brass cap was? A. Yes.

Q. Did you also point out that meander corner?

A. Yes, we stopped, as I remember, and looked at this tag, and it showed where that meander corner was, and I think we probably walked down through to the lake edge and looked at it. I am not sure.

Q. Well, then, I assume that you walked from the meander corner or from the trail near the meander corner along the north line over to the quarter corner? A. Yes.

Q. And pointed out the quarter corner to him?

A. I showed him, I know I showed him the quarter corner, too, because that was—the other one that is in the lake is a meander corner or approximate corner. I mean, it is not so definite as the other one set up here.

Q. Did you point out any other corners to him while you were there?

A. I don't recall pointing out any other corners to him.

Q. Did you point out any lines to him?

A. I don't believe I did.

Q. Did you take any measurements while you were there with Mr. [1681] Kenny, or did he take

(Testimony of Walter Stegmann.)

any measurements?           A. How do you mean?

Q. Did you do any chaining at all?

A. No, no chaining.

Q. Did you do any measurement by pacing or by any other method?

A. Well, I think he may have paced a ways along there.

Q. While you were there, I mean?

A. While I was, yes.

Q. Yes?

A. He may have paced it, I don't know.

Q. You don't remember, then, any measurements of any distance?           A. No.

Q. All right. Now, where was it that you used your compass?

A. Well, I think I probably may have used it down at this—from the trail giving the general direction, using it as a pointer giving the general direction of west.

Q. That would be the westerly direction here, wouldn't it?           A. Yes.

Q. That was in order to establish a north line of the property?           A. Yes.

Q. And probably you used your compass in finding the quarter corner for him?

A. I would think so, because quite often I do when I show people property; why, if I have my compass along I say, "Well, the compass points north, or east, whichever direction we are going," so [1682] this gives them direction they are going.

(Testimony of Walter Stegmann.)

Q. All right. Now, did Mr. Kenny have a compass, too?

A. I think he had a compass, too.

Q. Did you help him on any of his actual cruising?

A. I don't know whether he made this complete cruise at that time or not, but I walked up there a little ways with him and showed him approximately where I had went and some of the distances. I mean, I just walked a little ways up in here.

Q. Did he make any of his rounds or any of his tree counts while you were with him?

A. He was looking at the timber when he was going along, but whether he made a mental count of it or jotted it down after that, I don't know.

Q. Did you see him making any notes?

A. I never noticed him making any notes.

Q. Did you see him counting his paces, or anything like that?

A. That would be hard to tell, whether he was counting, as he was walking, or not.

Q. Would it be a correct statement, then, Mr. Stegmann, that, so far as you know, you did not help Mr. Kenny on the actual cruise of the timber?

A. Well, the only help, if you could consider it help, is where I showed him approximately where I went with the compass and used the compass pointing in a direction. If that is considered helping him, why, I did. [1683]

Q. Did you see him scale any of the trees, measure the diameter of them?



(Testimony of Walter Stegmann.)

A. Oh, I think when we first got on to the property there, that he went up to a tree or two and measured them.

Q. You only saw him do that on a tree or two?

A. Probably, I wasn't—he did on a tree or two, I am sure, and looking at them and just making a guess. We probably, even both of us made guesses on several trees to see how close it was. I don't know.

Q. How long were you there on the property with Mr. Kenny?      A. I just can't remember.

Q. Well, was it a matter of several hours?

A. Well, I would say, probably, walking up in there and showing him the reserved area, probably several hours.

Q. Was he still working there when you left?

A. Well, now, I just don't remember. It seemed like he was, but I am not positive of it.

Q. On August 18th did you say, Mr. Stegmann, that when you came down from the property, down to Mr. Winans' service station, did you say that Mr. Winans was hunting for his title insurance policy?      A. On the 18th, the evening?

Q. Yes.

A. Yes, I am sure that he was looking for his title policy there, but it was at that time, I thought it was the time he was [1684] going to show it to Mr. Parker.

Q. Then this, I take it, was after Mr. Parker had arrived?      A. Yes.

Q. What did he say he wanted the title policy

(Testimony of Walter Stegmann.)

for? Why did he want to show it to Mr. Parker?

A. I don't know. I told him that I had sold my option, or he knew then that Mr. Parker had purchased the option, and whether they were discussing—what they were actually discussing, I don't know, but when he said, when he wrote up the Election to Purchase, that maybe he wanted to find the policy or just to inform Parker that he had a policy, I don't remember exactly why he looked for it.

Q. Did he actually look for it while you were there?

A. He was searching through his papers. He had quite a stack of papers there.

Q. On the 18th?

A. Yes, his desk was always full of papers.

Q. Didn't you say yesterday that he was hunting for the title policy to prove to Mr. Parker that he had a title insurance policy?

A. I don't know whether it was to prove it or not, but I think he was just going to show Mr. Parker that he had a title policy.

Q. What did he say?

A. I can't recall the exact words. I mean, as I remember, it seems like he said, "Well, I have a title policy here I have not been able to find, but I have tried to find it, and I would like [1685] to show it to you.

Q. How long did he hunt for it?

A. Well, I don't believe he hunted very long, a few minutes.

(Testimony of Walter Stegmann.)

Q. Did Mr. Parker say, "Oh, never mind. I have already got a title report on it"?

A. I didn't hear him mention it.

Q. You didn't hear him mention that he had one in his pocket right then?

A. I didn't hear him say anything like it.

Q. When you were in Vawter Parkers office on September 8th, did Vawter Parker tell you that the \$95,000 final payment would have to be by a cashier's check or a certified check?

A. I don't remember exactly. I may have asked him because I believe Parker might have mentioned it, to ask him whether a personal check from Mr. Parker would be all right, or whether it should be certified. I may have questioned him on that matter, and he may have told me that he wanted a certified check from Mr. Parker.

Q. In which case you may have passed that information on to Mr. Parker on Saturday, the 8th?

A. I may have told Mrs. Parker, I don't remember, on Sunday, but I don't remember. [1686]

\* \* \*

### Redirect Examination

By Mr. Ryan:

Q. Did you leave Mr. Kenny on the Lost Lake property on the day that you showed him that quarter corner up there?

A. Well, I am not sure. It seems like I did, that he was still up there when I left. I am not positive, though.

(Testimony of Walter Stegmann.)

Q. At the time when you were with Mr. Winans on August 18th, and the Election to Purchase was typed out, had you given Mr. Winans to understand definitely at that time that the property was being purchased by Mr. Parker?

Q. Your testimony is that you are not certain whether you signed the yellow copy of the Election to Purchase itself, although you [1690] signed the approval of the Extension of Time. If you did sign that, at that time, was it with that understanding to Mr. Winans that you were acting for Mr. Parker with respect to the Extension of Time?

A. Yes, I told him that I was acting there, that the area had not been staked off, so I could agree on the Extension of Time. [1691]

\* \* \*

## THIRD-PARTY DEFENDANT'S CASE

## ETHEL WINANS

third-party defendant, called in behalf of third-party defendants, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Krause:

Q. Your name is Ethel Winans?

A. That is right.

Q. Where do you live, Miss Winans?

A. At Hood River.

Q. How long have you lived up there?

A. All my life.

Q. Will you tell us about how long that is?

A. Well, better than 50 years, between 50 and 60 years.

Q. How many years?

The Court: Better than 50 years.

Q. (By Mr. Krause): You have lived there continuously, have you not? A. That is right.

Q. Made your home there?

A. That is right.

Q. I suppose you were up at Lost Lake many years ago on occasions?

A. Many years ago. That was always one thing we always looked [1693] forward to, was going to Lost Lake, our family.

Q. Do you recall the first occasion when you met Walter Stegmann?

A. It was on the day that my brother, Paul, wrote up the option on August 11th.



(Testimony of Ethel Winans.)

Q. Do you have your own home separate from that of your brother, Paul?      A. Yes, I do.

Q. Just to get the general location, it is across the road from where Paul lives?

Q. Then there is a little service station on your side of the road?      A. That is right.

Q. That has been referred to as Paul's office.

A. Yes, he did have an office there.

Q. About what time of the day did you meet Mr. Stegmann on this August 11th?

A. Oh, between ten and eleven o'clock.

Q. Ten and eleven?      A. Yes.

Q. Where was it, and who was there?

A. Well, I had previously told Paul that—he was

A. That is right.

expecting Mr. Stegmann—I told him that when he got his deal shaped up that I would like to meet Mr. Stegmann. I had heard considerably about him. He had been calling on Paul, but I had not met [1694] him, and I asked Paul before the deal was closed, I would like to meet him, and Paul brought Mr. Stegmann over to the house and introduced him, and we all three sat there and talked about the Lost Lake property.

Q. Now, prior to that day, I suppose Paul had been discussing with you the fact that he was negotiating a sale?      A. He had.

Q. Had you also been familiar with the negotiations through Mr. Linville and with Mr. Montchalen?

A. I knew that Paul had also had that——

(Testimony of Ethel Winans.)

Q. Knew about their going on?

A. That's right; that is right.

Q. Did you participate in any of them yourself?

A. No, I didn't.

Q. While Paul and Mr. Stegmann were in your home, there, on this August 11th, was anything said what the deal was?      A. Yes.

Q. Between Paul and Stegmann?      A. Yes.

Mr. Jaureguy: My objection, of course, goes to this.

Q. (By Mr. Krause): What was said, and who said it?

A. Why, Paul made the remark, he says, "Mr. Stegmann is willing to pay eighty thousand for the 25 acres bordering on the lake, and twenty thousand for what we have in the back forty, our [1695] interest."

Q. How long did this conversation take place, how long were they there in your home?

A. Oh, not about—I think between 15 and 20 minutes, sat there and talked.

Q. Were there any other discussions about title or anything like that while you were there?

A. Not about the title, anything in particular, no.

Q. Then was that before you signed an option, Miss Winans?      A. That was.

Q. Where did they go from your house?

A. They went back to the service station, to Paul's office.

Q. To the office?      A. That is right.

(Testimony of Ethel Winans.)

Q. How soon after that was it that the option was brought to you to sign?

A. Oh, I imagine it was a little after noon, because I think Paul had taken Mr. Stegmann to lunch with him down at his house, down at the family home, his family.

Q. So, it was after lunch that the option was signed?

A. That is right.

Q. Did you go up to the lake with them that day, too, Miss Winans?

A. No, I didn't. Paul's family went and my brother, Ross.

Q. Did you ever have any dealings with Mr. Parker at all, Miss Winans?

A. Mr. Chet Parker? [1696]

Q. Yes, Chet Parker.

A. Not in any way.

Q. You were never introduced to him or met him, were you?

A. Not up until later on.

Q. Were you introduced to Mr. Parker at any time?

A. I was, on—when—the morning of August 27th, at Paul's office. I went over there on some other business, and Paul and Mr. Walter Stegmann and another man were sitting there at the table looking over maps, and I just said to Paul, well, I brought some people over there that I was showing around that were considering renting the service station and some cabins, and I just said to Paul, "I brought these people over to show them around." That is all that was said at the time.

Q. Did somebody introduce you to Mr. Parker?

A. Not at that time.

(Testimony of Ethel Winans.)

Q. They did not?

A. Not at that time, no, I was not introduced. It was later, about a week later when I was over there again, Paul and I were there in the morning, and Mr. Chet Parker drove up with another man. He came in and Paul introduced me to Mr. Chet Parker and this man, Mr. Wardell, with him.

Q. You were introduced to Wardell, to?

A. At the same time.

Q. You were in Vawter Parker's office at some time to sign a deed conveying this property? [1697]

A. Yes.

Q. According to the date on that deed, that was the 10th of September? A. Yes.

Q. It has been said here that it was Monday, the 10th of September.

A. I think that is right.

Q. Do you know about what time of the day you went down to Mr. Parker's office?

A. Oh, I think I went down, I was waiting there in town all day for them to give me the word that they were ready, and Paul came up to the house—we have a house there in town—and Paul came up to the house and told me they were now ready. I went back there with him. That was about mid-afternoon.

Q. Mid-afternoon. Who was there when you got to Mr. Vawter Parker's office?

A. The office girl was there, the secretary, Mr. Stegmann was sitting there waiting in the waiting room.

(Testimony of Ethel Winans.)

Q. Was there any conversation at all at that time between Mr. Stegmann and yourself or Stegmann and Mr. Vawter Parker or Paul while you were there?

A. Well, we had to wait quite a little while. The deed was not quite completed. They had a little re-writing to do, I think it was, and there was just a general conversation came up there about one thing and another. I don't know, Paul said [1698] something to Mr. Stegmann that he had heard that they was going to cut some timber on the property, and Mr. Stegmann says, "Oh, no," he says, "I know nothing about logging."

Q. Was there any discussion regarding title while you were there?

A. There was after that was—in Mr. Vawter Parker's private office Paul made the remark that he thought it would still be better for us to attempt to get this title straightened out than it would be for new people.

Q. For who to do it?           A. For new buyers.

Q. For new people, oh, yes. Did Mr. Stegmann say anything to that?           A. No, he didn't.

The Court: Was he there?

The Witness: He was there, present.

Mr. Krause: You may cross-examine.



(Testimony of Ethel Winans.)

Cross-Examination

By Mr. Ryan:

Q. What was said about the title?

A. What was said about the title? Nothing specially said in my presence, other than just my brother, Paul Winans, made the remark that it would be easier for the previous owners to try to get this title straightened out.

Q. Did he say what was the matter with it? [1699]

A. No, because he had discussed with Mr. Stegmann, as I understood all the time, all the way through, and how, what the existing difficulty——

Q. No, I am asking you, was anything said at this time what was the matter with it?

A. No; no.

Q. You say you understood that he had discussed it previously with Mr. Stegmann? A. Yes.

Q. Had you heard him?

A. I had asked Paul.

Q. Did you hear Paul talk with Mr. Stegmann?

A. Not with Mr. Stegmann, no. I was not present.

Q. When Mr. Chet Parker came up there with Mr. Wardell, Mr. Stegmann was not with him?

A. No.

Q. That is the time you were introduced to Mr. Chet Parker, as Chet Parker?

A. That is right.

Q. Did the introduction consist of anything more than, "This is Chet Parker"?

(Testimony of Ethel Winans.)

A. No, that was all there was to it. He came in with Mr. Wardell. They drove up. My brother and I, Paul was there at the station. Paul was working, I think, on some maps or papers of some kind on the table, and they drove up, and Mr. Parker brought Mr. Wardell [1700] in and Paul introduced the two of them to me.

Q. Did you stay there, or did you go on?

A. I looked on for a while. It happened that I was preparing to get things ready to turn the place over to these other people. I was sorting out things I was taking over to the house. I was there for a while, and then the things I had ready, I started to take some of the things and went over to the house. Mr. Parker left shortly. I know he went out because I saw him over about, near the house there by the garage, talking with another brother there, who was working on a truck.

Q. This claim of the United States Government to what we have been calling here Lot Number 2, did you people feel, did you feel that since you were the owner of the property, did you feel that that claim could be overcome and that the property could be put into your hands without any too great difficulty?

A. We did have certain forms that we had always counted on that we could go through with. My brother had done, I think, more or less negotiating with, I don't know, I think this Senator Cordon or somebody. He had had some correspondence with him. He had intended to take it up to get an Act of Congress or something of that kind through, and we

(Testimony of Ethel Winans.)

felt that he had an interest there that we had held all these times since our father had bought it; that it was something that could be cleared up and we would have title.

Q. Are you familiar with Mr. Vawter Parker? Had you ever been [1701] in his office before this occasion?

A. No, I don't believe I had ever been to his office, if I remember right.

Q. Are you certain that the stenographer or secretary was in his waiting room when you came in there? A. Yes, I am quite certain.

Q. Did you know this girl before?

A. No, I didn't.

Q. Do you know who she is now?

A. No, I do not. I didn't know her by name.

Mr. Ryan: That is all.

### Cross-Examination

By Mr. Jaureguy:

Q. Miss Winans, I am interested in this conversation that you told about between Paul and Walter Stegmann, and where you say Paul said that he understood this property was going to be logged.

A. He said, made the statement, that he had heard that Mr. Stegmann was going to cut some timber on it, which we didn't have any previous understanding there was to be any timber whatsoever cut on that place. He was buying it for resort purposes only.

(Testimony of Ethel Winans.)

Q. Did Paul ever tell you where he got this information it was going to be logged?

A. No, I don't believe he did.

Q. Do you think it could have been because of the fact there had been a cruiser up there, cruising it? [1702]

A. No, it was just something, some remark he had heard about town, I think, so far as I know.

Q. Just some remark he heard about town?

A. So far as I know.

Q. You have told us all you know about that?

A. Yes.

Q. I say, you have told us all you know about his information?

A. That is right.

Q. Did you, yourself, have any information about its going to be logged?

A. No, I didn't.

Q. Was this the first time you had, yourself, heard it was going to be logged, was you heard your brother say that?

A. That is right.

Q. He had not told you about it before?

A. No, he had not. I think probably he just picked it up that day probably while he was in town, so far as I know.

Q. You will recall that in 1944, you made a settlement with the Pacific Abstract & Title Company?

A. That is right.

Q. On this forty acres?

A. Yes.

Q. Did you ever have any communications with anybody representing either the Pacific Abstract &

(Testimony of Ethel Winans.)

Title Company, with the Portland company or the Hood River company, other than in writing? [1703]

A. No.

Q. You never talked to any of them?

A. No.

Q. That deed that was given to you, I think the record in the deed shows it was dated December 29, 1943, and recorded December 30th. Had that been given to you as a result of any negotiations, or was that a rather sudden idea?

A. Not exactly sudden. After my father's illness, it had been discussed that he was very ill, that there should be something done to take care and protect the property.

Q. Is it correct to say that there was no connection whatever between your giving that deed and the application for title insurance? A. No.

Q. I was wondering how it happened that the deed was given the day before you got your title policy?

A. Well, I imagine, just a coincidence.

Q. Just a coincidence?

A. Just the time it was settled.

Mr. Jaureguy: That is all.

#### Cross-Examination

By Mr. Buell:

Q. Miss Winans, as I take it, it was your brother, Paul, that handled most of the details pertaining to this Lost Lake property, not only since the time you got the deed to it, but also [1704] during the last few



(Testimony of Ethel Winans.)

years while your father still had title to it, while he was sick?

A. Well, more or less, he and father, of course, consulted previous to that time.

Q. Insofar as the transaction here which resulted in the final deed which was delivered to Mr. Abraham, Paul had acted with the approval of yourself and the other members of the family, hadn't he?

A. That is right.

Q. And he had kept you advised as to what was going on during the time of the negotiations?

A. He did.

Q. You say he had?                      A. He did.

Q. So you and your brothers and sisters have no fault to find with Paul in connection with what he did in reference to this sale?                      A. Not at all.

Q. Now, going back a moment to the occasion when you first saw Mr. Parker, which I believe you placed the date as August 27th, is that right?

A. That is right.

Q. Did you say that you had some persons who were interested in leasing or buying your service station?

A. In leasing, renting, leasing the service station. [1705]

Q. And you had brought them out to the service station at that time?

A. I had. They arrived that morning and my brother was still there taking care of the service station. I hesitated a moment about going over, but these people were anxious, wanted to get on their

(Testimony of Ethel Winans.)

way about something else, so I took them on through. As I stated, I said to Paul, "I brought these folks over," and he just acknowledged, and Mr. Stegmann, of course, I had previously met him.

Q. You recognized Mr. Stegmann?

A. I did, and he spoke. Well, the man sitting next to him, he did not because I had never recognized him before.

Q. Was Mr. Stegmann there on the 27th?

A. Yes.

Q. I believe you testified before, did you not, that there was another man that you didn't recognize in addition to Mr. Parker being there?

A. No; no.

Q. Oh, just Mr. Stegmann and Mr. Parker?

A. Yes, sir, the two besides my brother.

Q. And you were not introduced to Mr. Parker, and he was not introduced to you when you first came there?

A. Not at that time.

Q. Then about how long was it until the second occasion?

A. Oh, about a week, I believe. I think it was just after Labor [1706] Day.

Q. Did that also take place in the service station?

A. That is right.

Q. There was just this Mr. Wardell and Mr. Parker?

A. Yes.

Q. And your brother, Paul, introduced the both of those men by name at that occasion?

A. Yes.

Q. Did you recognize Mr. Parker as having

(Testimony of Ethel Winans.)

been the man you had seen in the service station on August 27th?

A. Yes, I did; that is right.

Q. At the time of that introduction, what was said as to the reason why Mr. Parker and Mr. Wardell were there?

A. Well, I think Mr. Parker told my brother why he had brought him there, that he was the man that——

Q. Well, now, just a moment so we won't have any misunderstanding. I was asking you as to what was said as to why Mr. Parker and Wardell were there, to you. In other words, what was said that you heard?

A. To me, nothing to me.

Q. Nothing was said?

A. No, not while they were there. They just went ahead talking between themselves, my brother, Mr. Parker and Mr. Wardell, and I went about my work, but I was still in the room, there.

Q. So, while Mr. Parker and Mr. Wardell were there, you did not [1707] overhear any conversation about a housing project or anything else?

A. They were, started talking about what business, but I did not pay close attention, not enough to relate it.

Q. I also was not quite clear as to how long it was that you saw Mr. Stegmann on the first occasion that he was introduced to you? I believe you identified that as being the day that the option was signed?

A. That is right.

(Testimony of Ethel Winans.)

Q. About how long a time did you see him that day, altogether?

A. How long a time? Oh, there at the house about fifteen or twenty minutes. Then they went back to the service station or Paul's office.

Q. During the fifteen or twenty minutes that you saw him, did he say anything about what he proposed to use the property for?

A. Well, I asked him——

Q. That you heard?

A. I asked him if he intended to—he indicated that he was buying it for a resort or something like that, or building a home. I asked him if he intended to develop it himself, and he said “yes.”

Q. Was anything said about logging it at all that day?      A. Not at that time, no.

Q. Did you, yourself, hear any conversation by Mr. Stegmann, in other words, so that you could say what you heard him say about [1708] the purchase price of the property, as to what it was?

A. No, he made no reply when Paul stated how he had set the business up. Mr. Stegmann made no reply.

Q. Then your brother Paul, while you were there and Mr. Stegmann was there, had told Mr. Stegmann, or in conversation had outlined that the prices for the property were \$80,000 for the Lot 1, and \$20,000 for your interest in Lot 2?

A. That is right. He was telling me and Mr. Stegmann were all just sitting there.

(Testimony of Ethel Winans.)

Q. Mr. Stegmann never said "yes" or "no"?

A. No, he didn't.

Mr. Buell: That is all.

The Court: Mr. Krause, any redirect?

Mr. Krause: Nothing further.

(Witness excused.)

The Court: We will recess until two o'clock.

(Noon recess taken.) [1709]

Afternoon Session—2:00 P. M.

(Trial resumed.)

The Court: Mr. Krause.

Mr. Krause: We will call Ross Winans.

### ROSS WINANS

third-party defendant, called in behalf of the third-party defendants, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Krause:

Q. You are Ross M. Winans?

A. Yes, sir that is correct.

Q. Where do you live, Mr. Winans?

A. Hood River.

The Court: Are you hard of hearing?

The Witness: I do not think so.

Mr. Krause: He can hear pretty well.

Q. How long have you lived in Hood River?

(Testimony of Ross Winans.)

A. Since 1887.

Q. Do you live in the town of Hood River itself?

A. No, we live out eleven miles out from Hood River near what we call the Punch Bowl on the Hood River Road. Hood River is our home, always has been.

Q. You are one of the defendants in this case?

A. That is correct. [1710]

Q. You were a son of Wilson Winans?

A. Wilson Ross Winans.

Q. Ethel Winans is your sister, who was on the stand? A. That is correct.

Q. Paul Winans is your brother?

A. Yes, sir.

Q. Are you acquainted with Lost Lake and the property that you folks owned or had an interest in up there? A. Yes, from childhood.

Q. From childhood? A. From 1888.

Q. Do you know Walt Stegmann, Mr. Winans?

A. Yes, I have met him several times.

Q. What was the first time that you met him?

A. It would be August 11, 1951.

Q. Where did you meet him?

A. Well, at our place, at the Punch Bowl Service Station.

Q. And that is the same, is that the same service station where Paul had his office?

A. That is correct.

Q. Do you know about what time of the day you met him?



(Testimony of Ross Winans.)

A. Well, not exactly. It was early in the forenoon of the 11th.

Q. Did you have anything to do with the preparation of the signing of an option for the sale of the property up there?

A. No, I had nothing to do with that part [1711] of it.

Q. Paul looked after that?

A. He looks after our business, yes.

Q. Now, did you make a trip up to Lost Lake with Walt Stegmann and Paul and his family on that same day? A. Correct; that is correct.

Q. How did you ride up; in whose car?

A. In Mr. Stegmann's convertible Buick.

Q. You rode up in Stegmann's car?

A. That is correct.

Q. Who else was in the car with you?

A. Well, my brother Paul and his family, his wife and——

Q. You were all in that one car?

A. Yes, sir.

Q. How long does it take to drive up to Lost Lake from the Punch Bowl Service Station where you started?

A. Well, to be careful, it would be about fifty minutes, careful driving.

Q. Do you know whether the option had already been given to Walt Stegmann at the time you went up there to the lake on the 11th of August?

A. No, it was not completed, at least.

(Testimony of Ross Winans.)

Q. Well, I mean, do you know whether the option had been given to him?

A. Not before we went up there, no.

Q. Not before you went up? [1712]

A. It was after we came back.

Q. On the way up there, was there any conversation regarding the title to the property?

A. Yes, there was considerable.

Q. What, if anything, do you recall being said about the title?

A. Well, one thing, I didn't do much of the talking myself, was to correct the title, for our congressman to get it corrected through an Act of Congress.

Q. Did Mr. Stegmann have anything to say about that?

A. Yes, he, well—I had not, but my brother had been in to it more or less with Senator Cordon, or through his office, and my brother talked along all about getting Cordon to carry it on through, and Mr. Stegmann then referred to Senator Cordon, Morse, that he was a friend of himself and his father.

Q. Well, what did he refer to Morse for? What did he say Morse would do or could do?

A. Well, he seemed to think as they were acquainted with Morse that he was better qualified than Cordon.

Q. To get this Act of Congress?

A. That is right.

(Testimony of Ross Winans.)

Q. Did he say any more about Morse that indicated his acquaintance with Mr. Morse?

A. Yes, he touched on that he would—that they had rode together at the rodeo, about him getting hurt by the horse, and just general conversation of what had happened. [1713]

Q. When you say they had rode in a rodeo together, do you mean Walt Stegmann and Senator Morse had attended rodeos together?

A. Well, other than what I heard him say, that is all.

Q. No, I want you to say what you heard him say?

A. Well, that is what he said, that they had rode together.

Q. That he and what?

A. That he and Senator Morse had rode together, yes, sir.

Q. Had rode together. Now, did you ever meet Chet Parker, Mr. Winans?

A. No, not until we had first finished our second survey party, that is, with Bogar and Haynes on the 18th of August. Then they was coming Saturday. They couldn't finish. They had to go back, and later Mr. Haynes and Kuns returned on Friday evening and we put in Saturday and finished on Sunday.

Q. You were along on the surveying parties, were you?      A. Yes, I was.

Q. When these surveyors from Portland went out to do the surveying?

(Testimony of Ross Winans.)

A. Yes, we completed our work.

Q. Yes. Well, now, was Parker along on any of those trips?

A. Not to my knowledge. I didn't see him, anyway.

Q. I asked you when did you get acquainted with Parker, if you did meet him?

A. Well, that was later on towards, around, after the 30th or 31st of August when he came back to our place. I met them at [1714] the station.

Q. Who did you meet at the station?

A. I met, I was acquainted with Walter Stegmann, but not yet with Mr. Parker nor his son. We rode together.

Q. Parker and his son showed up that day?

A. That is the first I had seem them.

Q. Did you go up to the lake with Stegmann and Parker and his son and Paul?

A. Yes, that is right.

Q. On that same day?                      A. Yes.

Q. Did you have any conversation with Mr. Parker on that day while you were up there on the ground?                      A. Yes.

Q. Did you hear anything said regarding the title to the forty acres?

A. Yes, there was considerable said about it.

Q. What was said and by whom and to whom?

A. Well, much the same as what we had already gone over with Mr. Stegmann, that it was to be corrected, the title, through the Act, through our congressman and an Act of Congress.

(Testimony of Ross Winans.)

Q. Did that involve the 25 acres, too, that were bordering on the lake, or just the forty acres?

A. The back forty.

Q. Just the back forty. Now, did Mr. Parker say anything to [1715] you at all regarding who was going to be the—or, that is, regarding his getting any interest in the property up there?

A. Yes, later on in the——

Q. Tell us the circumstances of that.

A. ——in the day as they had evidently had been at work there previously before we went up, they had established a stake out on the lake front, and I went out with Mr. Parker and his son to chain that back to where the angle of this one-eighth, 80/100ths acres, angles off over to the southwest corner.

Q. Yes, well, you do not need to give us all that, but I wanted to know where you were.

A. Yes, I will get to that.

Q. When you were talking to Mr. Parker, then, was that right on the lake front?

A. Yes. After we got started a ways, he casually make a remark to me, he says, "This is the most beautiful lake that I have ever saw," and after that he says, "I must have some of it, but," he says, "Walt Stegmann is a hard man to deal with."

Q. Was anything said at any time by Parker or Stegmann that Parker was interested in the purchase of the property or that he was buying?

A. Not in my presence, I never heard anything



(Testimony of Ross Winans.)

about Mr. Parker coming in on it other than when he said he must have some of it.

Q. Other than he was going to try to get some of it from Stegmann, that he must get a [1716] piece of it?

A. That would be my understanding.

Q. Of the property from Stegmann?

Mr. Jaureguy: I am going to object to the witness' summary—I mean the attorney's summary—I get them confused.

Mr. Krause: Well, I listened to a lot of Mr. Jaureguy's testimony, your Honor.

The Court: I am only listening to the testimony from witnesses.

Mr. Krause: Very good, then.

Mr. Jaureguy: All right, with that understanding I will withdraw the objection.

Q. (By Mr. Krause): Mr. Winans, on this day up there with Parker and his son, you had some conversation with the son, I suppose, did you?

A. Yes, he being a nice lad, and we got talking about hunting, fishing and trapping.

Q. Fishing and trapping?

A. That was a little down my alley.

Q. Did Mr. Parker—well, you tell us, what did Mr. Parker do while he was up there?

A. Well, coming noon hour, as I remember, he sent the boy back to the car, wherever they had those fireplaces, this fire service building, and those fireplaces to build a fire. He says, "I must have my warm coffee." The boy was gone for a while, and



(Testimony of Ross Winans.)

finally Mr. Stegmann went, and brother Paul [1717] and I had, we had our lunch together, and we stayed out there on the property along the trail where that little bridge crosses the inlet and waited for them to return, which they were not gone very long, quite a little distance out there and back, but they made it in good time.

Q. Parker and Stegmann and the boy left, then, was that it?           A. Yes.

Q. You remained there on the property?

A. Yes, Paul and myself.

Q. I do not think you understood my question, Mr. Winans. I wanted you to tell the Court just what did Mr. Parker do while he was out on the property.           A. Well—

Q. What was he up there for; what was he doing?

A. What I saw was that he was running a staff compass getting the degree, the proper parallel of the property, right angles—well, not right angles but paralleling with the line of the property of the meander corner out to the quarter corner which would—this 8.88, eight-tenths acres and getting an idea where this piece of property was to held out of.

Q. That is the reserved area?           A. Yes.

Q. Well, have you ever been on survey parties?

A. Yes, very much so.

Q. You have been on surveying trips from the time you were a [1718] youngster?           A. Yes.

(Testimony of Ross Winans.)

Q. On this day that you were up there with Mr. Parker, were you surveying?

A. Well, in a way I were, or running a line. I understood what was going on.

Q. This staff compass that you talk about, is that an instrument used by surveyors?

A. Yes, sir, it is very accurate, I will say, a magnetic compass with its sight, and it is on a swivel there. You set your staff down on the ground, fasten that on, and balance it so that the needle balances, and it has got its degrees there. Then whatever you are running, 21, 22, 23, North, East of North, and your right angle from that, or if you want to go off to the corner of the swamp there, why, you take off——

Q. Is that why it is called a staff compass?

A. Well, I imagine.

Q. Because it sets on top of a stick or a staff?

A. Yes, it is not a transit, not a tripod.

Q. What did Mr. Parker do with respect to checking or running lines?

A. Well, he evidently took his degrees off of that compass and run where, as near as could be where that line belonged, and left the shoreline running west.

Q. Did you have anything with which to measure distances? [1719]

A. Yes, we had a steel tape, hundred-foot tape, which I held one end of it, and the boy went ahead forward and took and got on a line as Mr. Parker following up with the sight of the compass.

(Testimony of Ross Winans.)

Q. Under whose direction were you running the line?      A. Running west.

Q. Yes, I know, but under whose direction; who was telling you where to go?

A. Nobody was really telling me. We were all three of us working together.

Q. Who were the three of you, the boy, Mr. Parker and you?      A. Yes, that is correct.

Q. Did you at any time that day see your brother Paul and Parker in any kind of an argument?

A. Well, I will say, no, there was no word spoken in my presence, or any cause for angry words or controversy. They seemed to be very agreeable, and we parted that way when we returned to our home.

Q. In whose car had you gone up that day?

A. This was Mr. Stegmann driving a Mercury, Ford.

Q. That was a different car than he had the other time?      A. Yes.

Q. All of you rode together in that one car?

A. Yes.

Q. You came back again together? [1720]

Q. How many hours were you up there altogether?

A. Well, the biggest talk which they had, Mr. Stegmann and Mr. Parker both had some cantaloupe, and we made good use of this, and when they were gone we got in the car and came home. We

(Testimony of Ross Winans.)

probably spent five or six hours all told out of the day.

Q. On the property or in the whole trip?

A. On the property and on the road and just visiting at this camp.

Q. Do you still work, Mr. Winans, or engage in any business?

A. Well, I work when I like to. I don't have to.

Q. When you are working, at what kind of work do you work?

A. Well, various work. I kind of work at mechanical or around machinery. I handle a paddle, considerably in the woods, paddle my own boat, in four months of it I had last year didn't hurt me.

Q. You have not been engaged in any business of any sort, though, lately?

A. No, not outside of what, what we have to take care of just as things come and go.

Q. Do you have a very wide acquaintance in Hood River County, Mr. Winans?

A. Well, I think yes. Yes, I think I have.

Q. Did you yourself read an article in the Hood River Sun regarding this lawsuit that had been filed by Title and Trust Company? [1721]

A. Yes, I have a copy of that in my files today.

Q. You read it yourself? A. Yes.

Q. Did other folks up there in Hood River County discuss that article with you?

A. Yes, considerably.

Q. And have your friends and acquaintances asked you about your connection with this suit?

A. That is right.

Mr. Krause: I think you may cross-examine.

(Testimony of Ross Winans.)

The Court: What is the theory of that claim here for a libel case, that the newspapers copies portions of the complaint that was filed in the case?

Mr. Krause: Yes, your Honor, the complaint, that the complaint was filed here by the Title and Trust Company, and at the time they filed it they knew that it would be given publication up in the community in which these people reside. We will have more on that later. There were a good many articles in the newspaper up in Hood River relating to this sale.

The Court: Are you claiming that Title and Trust or Parker gave the information to the paper?

Mr. Krause: Well, Title and Trust Company did by filing the complaint here, and I do not know to what extent Parker—we, of course, still have not got to that point yet, but we will have witnesses on a little later as to who gave publication to [1722] these false charges.

The Court: Have you any authority to show that a newspaper that copies——

Mr. Krause: We are not suing the newspaper; we are suing the Title and Trust Company.

The Court: Do you have any cases to support an award of damages to a defendant in a lawsuit on the ground that libel is slander?

Mr. Krause: Well, of course, the publication is in the filing of the complaint. If the complaint is filed in bad faith, I suppose the Court might agree with me now that that might give rise to a libel action, the publication of charges in the complaint.



(Testimony of Ross Winans.)

Now, as we view it, the law in Oregon is that if the complaint is filed in good faith upon reasonable grounds, they can say almost anything they want to about people in a complaint, but it is our contention that they had no grounds whatsoever for charging us with fraud and deceit when this complaint was filed.

Now, all the evidence is not in on that point yet because we are going to have to call some of the people that know about what they did. Of course, we have quoted Parker and Stegmann as well as the title company. Parker and Stegmann, if they communicated these false charges to the title company that we had misrepresented the ownership of that property, and the title company, if they did not communicate any such charges to them, would the title company take them out of the air? [1723]

The Court: Well, there is no use arguing that point now. We will wait until the evidence comes in.

#### Cross-Examination

By Mr. Ryan:

Q. Are you sure that this conversation about Senator Morse did not come up in connection with some newspaper publicity given to the senator at that time? A. Absolutely not.

Q. You are sure the conversation took place on the road up to Lost Lake? A. It did.

Q. Tell us what was said about the defect in the title on this trip, or, if anything about a defect was said.



(Testimony of Ross Winans.)

A. Well, they were to—Mr. Stegmann, especially, was the only one that I knew—was to know that we were not giving a warranty title to the back forty.

Q. Now, who said this, Mr. Stegmann, Paul Winans?      A. Paul Winans.

Q. Can you repeat his words?

A. He says, "We are working on it through Senator Cordon to get the title cleared up through an Act of Congress." Mr. Stegmann brought up Mr. Morse, then, and said that they were friends, he and his father were friends of Senator Morse and they could use Senator Morse.

Q. How did this subject come up? [1724]

A. Pardon?

Q. How did the subject come up in conversation?

A. Well, along with the general talk about Lost Lake and about the property and how we had acquired it. I was with my father when he bought it.

Q. Was that all you were talking about all the way up?

A. Not necessarily. It was other—touched on other things, politics.

Q. Give us your conversation while on the way up?      A. Politics and jokes.

Q. And what?      A. Politics.

Q. And jokes?

A. And jokes to break the monotony, I suppose.

Q. Can you give us this conversation? I mean.

(Testimony of Ross Winans.)

just give us how the conversation transpired in the car.      A. Well, as near as I can.

Q. Pardon me?

A. As near as I can. As we started out from home it was not long until we began to talk on about the property.

Q. What did you say about the property?

A. That the title on the back forty would have to be cleared up.

Q. Would have to be cleared up?

A. Yes. [1725]

Q. Was that the first conversation you had in the car?

A. I would not say that it was, no.

Q. That is the reason for my questioning. I wanted to know what your recollection of that conversation is.

The Court: You mean about this general subject, or about other things that were discussed on that day?

Mr. Ryan: My question is this, your Honor. What was the conversation in the car, the entire conversation, as near as he can recall it.

The Court: With reference to the property?

Mr. Ryan: With reference to anything. I asked him originally how this matter came up, but it was not entirely clear as far as I was——

The Court: Do you want him to tell you the jokes?

Mr. Ryan: Well, it might entertain us.

The Court: All right, Mr. Winans, try to give

(Testimony of Ross Winans.)

him a play-by-play description of what happened after you got in the car.

The Witness: Yes. Well, after Paul mentioned that we were endeavoring to get the title cleared on the back forty and, as said a moment ago, he referred then to Senator Morse, and maybe we talked about that for a little while, talked about politics, talked about the weather, possibly, and conditions of the road, and met a log truck and changed the conversation, and then back again to the property.

The Court: Mr. Winans, what Mr. Ryan is trying to find out [1726] is what was the occasion for discussing the defect in the title. How did that come about? Did you first start talking about the property, the back forty, and the front lot, Lot 1?

The Witness: Well, yes, it was not necessary to talk about the 25 acres. That was clear.

#### Examination by the Court

Q. Did you talk about it anyway? A. Yes.

Q. All right, now, what did you tell, or what did your brother Paul tell Mr. Stegmann, or say, while you were on that trip with reference to the 25 acres or Lot 1?

A. Well, as I understand that, we were in the clear on that because we knew previously that that was correct.

Q. Had you already made a deal with Stegmann to sell him the property for a certain stated amount prior to the time that you went on this trip?

(Testimony of Ross Winans.)

A. Not that I would know anything about, your Honor.

Q. Well, did you discuss the sales price of the property, then? A. I believe not, no.

Q. Did you discuss the timber on the property?

A. No, I think it was more the plot of home sites a fellow had laid out there when he was getting it ready for sale.

Q. Did you talk about how the property was acquired by your father?

A. I would not say that. I don't think so because I knew how that was for I was with him when he bought it. [1727]

Q. Well, we were not interested in that, Mr. Winans. We were trying to find out particularly, Mr. Ryan is trying to find out how this conversation happened to take place, and what was said either by yourself or Mr. Winans or Mr. Stegmann, and we would like to have you tell us, relate as nearly as you can, the conversation of Mr. Stegmann and your brother Paul and yourself, if you participated in it, in their own words, in the words used by those people, if you can.

A. Well, Mr. Stegmann seemingly didn't seem to be much concerned about it.

Q. That is exactly what Mr. Ryan does not want you to say. He wants you to tell him not what you thought Mr. Stegmann thought or his appearance of concern or unconcern, but what did Mr. Stegmann say and what did your brother Paul say?

A. It is this, that Paul says, "We will get Sena-

(Testimony of Ross Winans.)

tor Cordon and ask him if he is already working on it to get an Act of Congress to clear up that back forty." And Mr. Stegmann says, "We will work through our friend, Senator Morse."

Q. Did your brother Paul tell him in your presence on the trip that the Government claimed ownership of that Lot 2 of the forty-acre tract?

A. As near as I can remember, yes.

Q. What was the nature of the defect in that title to Lot 2, not what the real nature of it—what did your brother Paul tell him was the difficulty with that title? [1728]

A. Other than the Government claimed that as it was not surveyed, the State gave title to it to Macrum and through Macrum to my father.

Q. Was there any discussion relative to a claim having been made to Pacific Abstract & Title Company some years previous? Was that discussed?

A. That I couldn't say.

The Court: Well, I did the best I could, but is there anything else you would like to ask him with reference to that?

### Cross-Examination

(Continued)

By Mr. Ryan:

Q. Was it your understanding that you people had a good title to that; that you had a right to that property? A. We had a warranty deed.

Q. You felt at the time that you had a right to that property? A. Yes.



(Testimony of Ross Winans.)

Q. Did your brother Paul feel that, from what he said?

A. I would not say what Paul said, but I saw——

The Court: That question has been asked each of the witnesses, and I do not see the relevancy except insofar as it might cast some doubt as to what they actually told these other people.

Mr. Ryan: That is the point, your Honor. That is the extent of the questions.

The Court: Mr. Jaureguy? [1729]

### Cross-Examination

By Mr. Jaureguy:

Q. I wonder if I could have Exhibit 303.

If you do not mind, Mr. Winans, I would like to kind of look over the map with you.

A. It is my kind of map.

Q. And see if you can tell me anything about it. Did you ever make any maps?

A. Oh, in a rough way.

Q. In a rough way. Does this look at all familiar to you? This says, "Lost Lake," there.

A. Yes.

Q. This, I think, is supposed to be north up here. That is south; this is Lost Lake, and so this is west, you see?

A. On the map they are correct.

Q. How does that map look to you? Have you seen it before?



(Testimony of Ross Winans.)

A. I have seen the lake, but what is this, this meander line of the lake (indicating)?

Q. I was wondering if you could figure it out better if north was up.

A. That is what I have always been told.

Q. Whoever made it put it upside down. That is the meander corner there, isn't it? That is the north boundary of your property there, isn't it?

A. The sixteenth—yes. [1730]

Q. This is the lake here?

A. I am talking about the land.

Q. This is the land? A. Yes.

Q. And this is divided into lots, 1, 2, 3, 4, 5, 6, 7, 8, 9 small lots and one big one. How did it happen to be in that number of lots; do you know?

A. Well, if this was later on, why, I suppose why—if this is the Government's lot, why, I don't know anything about it.

Q. Suppose it is later on, then why?

A. Because my father had it platted.

Q. This map, I think we will agree, was made in probably August of 1951. August 11th, you have testified about August 11th going up to the lake with Stegmann and your brother?

A. That is right.

Q. And you have testified about August 27th and 28th and about August 31st?

A. Around that time.

Q. Why would this be nine lots, nine small lots and then one big one; could you tell us?

(Testimony of Ross Winans.)

A. No, I wouldn't know anything about it.

Q. You do not know anything about it?

A. No.

Q. Did you ever see any maps during the time of these negotiations? [1731]           A. No.

Q. You never did?

A. No, I am positive—all I know is the Government map.

Q. You recall, I think, in your testimony, that the reserved area was to be a little over eight acres?

A. 8.88.

Q. 8.88, you have got that exactly. Where was the reserved area supposed to be?

A. Well, it would be what is left of it on the southeast portion of it out to the southwest corner of the 25 acres.

Q. Over to the southwest portion of the 25 acres?           A. Say that again?

Q. You say the 8.88 reserved area was supposed to be in the southwest portion of the——

A. Southwest and southeast on the lake shore.

Q. Southwest and southeast, in other words, the southern portion of it?           A. That is correct.

Q. Did you and Paul want to have any on the northeast portion?

A. Well, we would like to, but Mr. Stegmann—it originally was my father's camp site.

Q. Northeast quarter?

A. When we first came on the property from the trail.

(Testimony of Ross Winans.)

Q. Do you know whether or not this map was not made so as to give the whole lake front, as far as that is concerned, northeast [1732] and southeast, all of it?

A. Well, maybe you do not quite understand me there.

Q. No, maybe not.

A. Well, I am talking about all this 8.88, what I am getting at is the corner of the boundary.

(Discussion off the record.)

Q. You say, I didn't quite understand you. You started to explain it to me.

A. Isn't that all right now?

Q. No, I haven't quite got it yet. I was disturbed.

A. Well, I am talking of the corner, boundaries of this 8.88.

Q. Yes?           A. When I refer to the——

Q. Reserved area?

A. Northeast boundary running west, angles off to the southwest corner of the 25, and then east to the lake shore, and the iron stake is the boundary, is the boundary of that 8.88.

Q. The way it is now?

A. That is the way I understand, yes.

Q. The way you finally got it?

A. Yes, that is the way I understand it.

Q. But isn't this map with this area along in the northeast corner and going right down, is that the way you originally wanted it?

A. I wouldn't know. [1733]

(Testimony of Ross Winans.)

Q. You would not know? A. No.

Q. Well, now, could you give me some idea from this map—this is a creek, was it?

A. Yes, inlet.

Q. Where it was that Chet Parker was when he told you that Walt Stegmann was the hired man to deal with?

A. This is the lake (indicating)?

Q. That is the lake.

A. No, this don't look good to me.

Q. It does not look good to you?

A. No, well, we will say this is the lake.

Q. Yes.

A. Well, we should start right in and pace like this, run out here and out here to the southwest corner of the 25 acres on an angle like this.

Q. Here is the southwest corner of the 25 acres here. (Indicating.)

The Court: Mr. Jaureguy, you should use a different kind of a map, one he is familiar with.

Mr. Strayer: How about this one? It is a little better.

The Witness: Yes, one to show what the lake looks like.

Mr. Strayer: Here is the Government map (tendering map).

Q. (By Mr. Jaureguy): Now, there is a Metsker map and here is the Government map, and here is a chart. Which one are you best [1734] used to? You see, that says "W. R. Winans." That is your father, isn't it (referring to map)?

(Testimony of Ross Winans.)

A. Well, let's see, paralleling this line out here, and then up to the corner here.

Q. That is what? This is the creek here, right there, isn't it?

A. This is the creek, that is right.

Q. What is it you were trying to explain there?

A. Well, where Mr. Parker and his son and myself were running this line here, out here evidently.

Q. I am asking you now where you were when Parker tried to tell you that Walt Stegmann was the hired man to deal with?

A. That was when we were right along close to the water, looking over the water and back across the lake.

Q. Well, you are pointing north of your property now? A. Looking out here on to the lake.

Q. Yes, and, as a matter of fact, had there not been arguments there at all about what the reserved area was going to be? A. No.

Q. You never heard any arguments between——

A. None whatever.

Q. At any time you were up there?

A. None whatever at any time or since.

Q. At any time when you were up there you never heard any arguments?

A. No; no, we got along nicely, and there was no reason for any [1735] and no cause for any argument.

Q. Now, this time just let me go a little further. At no time you were up there, there were never any arguments between Paul and Walt Stegmann?



(Testimony of Ross Winans.)

A. No.

Q. About the reserved area? A. No.

Q. You never heard any argument between Walt Stegmann and Chet Parker about the reserved area?

A. I wouldn't know anything about that.

Q. Well, I mean when you were up there.

A. No, I didn't hear at all.

Q. When you were there you never heard any arguments between your brother Paul and Chet Parker about the reserved area?

A. Absolutely not.

Q. You did not? A. No.

Q. When they were standing on the bridge there?

A. No.

Q. They were on the bridge a long time, were they? A. What was that?

Q. They were on the bridge a long time, were they? A. No.

Q. Pardon?

A. No, we didn't have any occasion to [1736] stay.

Q. I am not talking about you; I am talking about your brother Paul and Chet Parker.

A. No, absolutely.

Q. Not there at all? A. No.

Q. So that from the time the negotiations for this deal started until the very end, you never heard about any arguments between any of these parties on the reserved area?

A. No, this court one is the first.

(Testimony of Ross Winans.)

Q. First place you have heard it?

A. Yes.

Q. Who mentioned it in the court room first? You heard Paul talk about it? Didn't you hear that in the court room?

A. Well, I have been down on one or two other occasions and—yes.

Q. So when you heard your brother Paul talk about the arguments on the reserved area, that is the first you ever heard about it?

A. Yes, there is nothing to it.

Q. That is what we want to know.

A. Absolutely nothing.

The Court: Maybe he does not understand the word "argument." Maybe discussion.

Mr. Jauregui: Well, I have been using the word arguments, whether there was any argument. Now, I will ask whether there were any discussions that you heard about where that reserved [1737] area should be, discussions between your brother Paul and Stegmann? A. Absolutely no.

Q. Discussions between Stegmann and Chet Parker? A. Absolutely no.

Q. Discussions between your brother Paul and Chet Parker? A. The same.

Q. The same; the first you ever heard of it was when you heard your brother Paul testify in the court room? A. Yes.

Q. You say that when you were going up there to the lake on August 11th with your brother and Walt Stegmann that nobody mentioned the fact that

(Testimony of Ross Winans.)

you theretofore had collected from the Pacific Abstract & Title Company on a title policy?

A. No.

Q. At any other time—— A. No, sir.

Q. At any other time did you ever hear your brother Paul tell any of the parties that we have been talking about about the title policy that you had with Pacific Abstract? A. Never.

Q. You never heard him say that he had a title policy? A. Yes, I understood that at one time.

Q. No, I don't mean—I will have to correct myself—I made a mistake. I didn't mean to say that you ever heard it. I mean, [1738-39] did you ever hear him say anything about a title policy to Walt Stegmann? A. No.

Q. Or to Chet Parker? A. No.

Q. Or tell them that he had collected money on a title policy? A. No, sir.

Q. You knew that the money had been collected on the policy? A. Yes.

Q. You are saying that with some hesitancy as though you are not sure.

A. Not necessarily, no.

Q. No, that is, you mean——

A. Nothing that I should not hesitate on.

Q. Now, I say you are sure; you knew about it?

A. Yes.

Q. Very well. You were with the boy quite a lot that day on the 31st day of August; were you not?

A. Well, pretty much. On the trip up there and back we got quite friendly.

(Testimony of Ross Winans.)

Q. And you had a deal on a bear skin?

A. Now, that is very common.

Q. Now, whereabouts was it on that day where you say your brother was telling Chet Parker about trying to get this Act through Congress? Where was that, in the car up there? [1740]

A. Yes.

Q. In the car on the way up? A. Yes, sir.

Q. So they didn't discuss that after they got up there, as far as you know?

A. Not to my knowledge, and I was with them practically all the while out there. When they went to lunch, that I wouldn't know, was to themselves.

Q. When your brother was telling Chet Parker on the way up there about getting this Act through Congress, was he a Cordon supporter or a Morse supporter? Did he feel that Cordon was the man to do it or Morse was the man to do it?

A. Not necessarily. He had some work through the attorneys, Cordon, I believe, and his attorneys were connected, that is all. Brother Paul evidently kind of liked that Cordon.

The Court: Mr. Jaureguy, I thought that this was a conversation with Mr. Stegmann and not with Mr. Parker.

Mr. Jaureguy: We have left that and come to another one. We were talking about the Stegmann conversation a little while ago. Now he is on the way up in the car; is that correct; am I quoting you right that on the 31st of August on the way up to Lost Lake in the car your brother told Chet Parker about trying to get this Act through Congress?

(Testimony of Ross Winans.)

A. Well, it came up, well, he didn't necessarily tell him, but it was talked along with other discussions. [1741]

Q. Who was in the car besides you and your brother and Chet Parker?

A. Well, Stegmann was driving. I was in the front seat with Walter. Chet and his son was in the rear seat with Paul.

Q. Were the five of you in the car going up?

A. That is correct.

Q. Was that right after you left your brother's place or getting pretty close to Lost Lake?

A. Oh, no, on the way. I would not just say what point, but as I say, it takes about 50 minutes to take the trip.

Q. Did Parker go out to a stake in the lake, walk out to the stake in the lake?

A. I didn't see him do it.

Q. What did you say? I couldn't catch up with you in my notes.

A. Well, he went out to where more or less water, and sank this staff compass up and took a sight, had me hold the chain where that, from the starting point and then took the forward end and went forward and kept him on a line, and then, and we had to cross considerable windfalls, and we had to be a little careful not to get stuck because there are some deep water holes in there.

Q. That is when he told you what a beautiful lake it was?

A. That is correct.



(Testimony of Ross Winans.)

Q. Said he wanted a piece of it?

A. Yes. [1742]

Q. But Stegmann was the hired man to deal with?

A. That is right.

Q. This compass, how do you work that? You put a stake in, then you take that compass——

A. Yes, it fits right on to a connecting socket there, sets on top of the stick. Then there is a ball and socket there and you level that up and tilt it until the needle balances, and you see, here is your needle (indicating).

Q. And you get north?

A. Yes, yes, north. If you want an angle, why you turn around here to 23, your right angle——

Q. Then you tell the fellow down here where to take that chain?

A. That is correct.

Q. It is not very hard to do that, is it?

A. I don't know, I watched the other fellow do it.

Q. Where was Stegmann all this time?

A. Well, he and Paul went to drive some iron pipe on some stakes, some of the work that we had finished up with Mr. Haynes and Kuns.

Q. Went to drive pipes, iron pipes in the ground?

A. Yes, about like that.

Q. How many?

A. Oh, I think probably six or eight of them. We used in the neighborhood of one, two, three, and I think there was about [1743] four or five of them up there laying by the——

Q. It didn't take them five or six hours to do that, did it?

A. Not necessarily, no.

(Testimony of Ross Winans.)

Q. What did they do the rest of the day?

A. On the road.

Q. What is that?

A. On the road eating cantaloupe.

Q. No, I mean after they got there and before they went back, while they were up there what did they do besides drive those four stakes.

A. They come right back to where we were at.

Q. Then what did they do?

A. Went to lunch.

Q. Is that all the work they did that day?

A. Yes, sir.

Q. Drive three or four stakes is all that your brother and Walt Stegmann did that day?

A. Yes.

Q. That is all you are sure of?

A. That is all they put in, put them in. I saw them last summer.

Q. How long were those stakes, you say about four feet long?

A. About forty-five, thirty-five inches long.

Q. How far in the ground did they drive them in?

A. Oh, drive in for two-thirds of the length to leave enough [1744] stake to find them.

Q. You say that driving four of those stakes was all the work that Walt Stegmann and your brother did that day?

A. Yes.

Q. You are sure of that?

A. Positively.

Q. You say positively or possibly?

(Testimony of Ross Winans.)

A. Positively.

Q. Positively; that is what I thought. That is all.

Cross-Examination

By Mr. Strayer:

Q. Mr. Winans, do I understand that when you went up to the property on August 11th the contract had not yet been drawn up?

A. No, just a matter of looking at the property.

Q. Do you know whether Mr. Stegmann had been to the property before that day?

A. I couldn't say.

Q. There was nothing in your conversation on the way up that indicated whether he had been there before or not?

A. Not in my presence, no.

Q. Do you know from anything, either from what he might have said or from what your brother Paul might have told you, do you know whether they had discussed the price before that [1745] trip?

A. That I wouldn't know.

Q. Did you get an impression when they were talking about this title matter, did you get an impression that this was a rehash of something that they had gone over before?

A. No.

Q. You got the impression that it was brought up for the first time, then, on this trip?

A. Well, on that deal, yes.

Q. Well, but did you get the impression that Mr. Stegmann had heard about it before, or did this seem to come as a surprise?

A. Well, yes, when we talked with him, Paul

(Testimony of Ross Winans.)

and his family any myself and Mr. Stegmann drove up in the Buick. We talked about it then. That is when it came up.

Q. There was you and your brother Paul, Mr. Stegmann and the boy, and who was the fifth member?

A. No, that was the last trip. We are talking about the first trip on the 11th.

Q. Yes, the first trip, August 11th, who was along on that trip?

A. My brother Paul, his wife and children and myself, and Walt Stegmann.

Q. All right, now, your brother Paul, you say, brought up this matter of a defect in title or a Government claim; is that right?

A. He mentioned it, yes, just casually mentioned that they were [1746] not selling that part of it.

Q. Oh, he said they were not selling the forty acres?

A. He did not say they were not selling it, but he says that is in doubt, we have to correct it, correct the title.

Q. Well, did you understand that Mr. Stegmann was buying the forty acres as well as the title?

A. Well, on the first survey, day of the first survey when Mr. Bogar and Mr. Haynes, we ran out to the corner there. Walter and his brother Carl came to us just as we were about to get to the corner, and we had to have lunch and somebody asked Carl if he would go back to the car and bring over the lunch so we would not have to all go back and put in

(Testimony of Ross Winans.)

so much time as we might on the surveying. While he was doing that, why, Walter was close to me, and he went out to this meander quarter corner. It is a piece of pipe, stands about 25 inches or possibly 30 above the ground, and it has a bronze marker, and he laid his hands on it and looked out across in the west, the southwest corner, and says, "I want this forty." I don't know whether he was talking to himself or to his brother, but I heard him make that remark.

Q. Who said that, Walter Stegmann?

A. Walter Stegmann.

Q. That would have been about the 30th of August?      A. That would have been the 18th.

Q. The 18th of August; is that right? [1747]

A. I had better correct that.

Q. Well, now, the option—to get you straightened out on your dates now—the option was made out and signed on August 11th?      A. Yes.

Q. And it covered both Lot 1 and the back forty. Do you have something that will refresh your memory on dates?

A. Just a moment please. (Witness consults document.) Yes, this was on August 18th, 1951.

Q. August 18th?

The Court: What are you looking at?

The Witness: My own memorandum.

The Court: You prepared this yourself?

The Witness: I did.

The Court: When did you prepare this?



(Testimony of Ross Winans.)

The Witness: Oh, it is pretty much—that has been copied from the original.

The Court: The original what?

The Witness: Of our work.

The Court: Of whose work? This is a story of how this transaction happened?

The Witness: Yes.

The Court: Did you work this up yourself?

The Witness: Yes.

The Court: Did you give Mr. Krause a copy?

The Witness: He saw it. [1748]

The Court: He saw it?

The Witness: He has gone over it.

The Court: And this is just to refresh your memory?

The Witness: Yes.

The Court: You had better hand that over to Mr. Strayer. You had better turn that over to Mr. Strayer.

The Witness: Will I get it back?

Mr. Strayer: Yes, you will get it back.

The Witness: I will set a bear trap for you.

The Court: Have you got a copy of it, Mr. Krause?

Mr. Krause: I have not, your Honor, no. He showed it to me, though.

The Court: Show it to Mr. Jaureguy.

Mr. Jaureguy: Yes, I would like to see it.

(Discussion off the record.)

Q. (By Mr. Strayer): I understand this memorandum that you have handed me, Mr. Winans, this

(Testimony of Ross Winans.)

is a memorandum that you made up trying to put together your recollection of what happened on various dates; is that what it is?

A. That is right.

Q. In making this up, did you talk it over with Paul Winans or the members of your family?

A. Oh, yes.

Q. Does this represent a sort of a consolidation of what each of you remembered? [1749]

A. No, it is all here.

Q. It is all your own?                      A. Yes.

Q. All your memory?

A. How I helped out on it.

Q. Did you have a disagreement with your brother or anyone else?                      A. No.

Q. Regarding any of these dates?

A. No, I just wanted to do that. I have got my own typewriter.

Q. You say you have talked this over with Paul?

A. No, absolutely not.

Q. Has he seen this?

A. I have let him look it over, yes, I have let him read it.

Q. But this is all your own recollection and not his?

A. Certainly; Paul had nothing to do with that whatever, or anybody else. I am not an expert, but that is the way I put it together.

Q. All right, then, Mr. Winans, getting back to my question a while ago, now, on August 11th was the first date that you met Mr. Stegmann?

(Testimony of Ross Winans.)

A. That is correct.

Q. And the first time that you all went up to the property?

A. That is correct.

Q. Now, it was on the same date that Mr. Stegmann took the [1750] contract, the option?

A. That is right.

Q. On both the lake front property and the back forty acres; is that right?

A. Yes.

Q. All right. Now, my question to you is: On that day was there any discussion of what property Mr. Stegmann was going to take? Did you have the impression that he was buying only the lake front property, or he was buying both that and the back forty?

A. He wanted it. That is all I can say.

Q. He wanted it, you say?

A. He wanted the whole 65 acres.

Q. Well, then, he must have said something that makes you think he wanted it on that day.

A. Yes.

Q. Do you remember what he said?

A. He says, "I want it." When we went on the survey, he says, "I want this back forty."

Q. You were not surveying on the 11th, were you?

A. No, that was our first trip when we went out to look the property over.

Q. Well, then, he said that he wanted it while you were out there on the 11th, you mean?

A. No, on the 18th. [1751]

Q. But, Mr. Winans, by the 18th he had already acquired the contract on it.

(Testimony of Ross Winans.)

A. Well, he still wanted to make sure of it.

Q. Apparently he had decided on the 11th that he wanted it because he took a contract to buy it for a hundred thousand dollars. Now, was there any talk about that on the 11th about whether he wanted the back forty or not?

A. Well, we ran a line out there. He saw what it was. He saw the timber. If he was after timber, we did not know what he wanted. We supposed he wanted home sites.

Q. Did you take him out and show him the land on the 11th? A. Yes.

Q. Did you show him the quarter corner on that day? A. We did, the bronze marker.

Q. Did you show him where the lines were and where the timber was?

A. We didn't show him timber, just showed him where the lines was and the corner. That is all we was interested in was the corner. That is, as far as we went was to the quarter corner.

Q. Getting back to your trip up there in the car on the 11th, Mr. Winans, when this matter of title came up, did you have the impression that your brother Paul was talking about land that was included in his deal with Mr. Stegmann?

A. No, no.

Q. Or what land that was not? [1752]

A. No, I didn't know anything about that.

Q. You had the impression that that was the first time that the title had been mentioned to Mr. Stegmann? A. Yes.

(Testimony of Ross Winans.)

Q. Did Mr. Stegmann seem to be surprised to learn something was wrong?

A. No, he didn't want us to tell him anything.

Q. He didn't want——

A. He didn't want us to tell him anything.

Q. Why do you say he was surprised?

The Court: He did not say he was surprised.

Mr. Strayer: Then I misunderstood you.

The Witness: Yes.

Q. (By Mr. Strayer): I thought you said that he did seem surprised?

A. No, he didn't want to be told.

Q. Oh, I see, but he did not seem surprised?

A. Yes, he seemed to know more than we did about it.

Q. Then you had the impression that he already knew about the Government claim, then, did you?

A. Evidently, yes.

Q. Well, then, Mr. Winans, as I understand you, you went back up there again on the 18th, and on that occasion there was yourself and your brother Paul, Stegmann, and Parker and Mr. Parker's son? [1753]

A. No, Parker was not with us on the 18th. I didn't know him on the 18th.

Q. What date was it you were up there doing your surveying? Was it on the 30th or 31st?

A. In or about the 30th or 31st. I would not be positive.

Q. That is the date I want, then. It was on that



(Testimony of Ross Winans.)

date that there was yourself, Mr. Parker and his son, Mr. Stegmann and your brother Paul?

A. That is correct.

Q. And is that all?           A. Yes.

Q. As I understand it now, at the time that Mr. Parker made the statement that he wanted the piece of that property, you were working with Mr. Parker and his son?           A. That is correct.

Q. Where was Mr. Stegmann and your brother Paul?

A. They went out to drive those iron stakes.

Q. How did they know where to drive them?

A. Well, we had already run around there with the surveyors, and we had a wooden stake out on the southwest corner of the 25 acres and ran out east from there to the lake, and they went out to establish those two iron markers.

Q. Well, then, they were working behind you?

A. We were ahead. They were off to themselves.

Q. You were running the lines, and they were coming along [1754] behind you putting iron stakes out?

A. Well, we didn't complete the line that I was on, especially the chaining of it.

Q. Would you say that Mr. Parker was acting as a compass man on the survey?

A. I don't know what he was acting, but he understood his compass.

Q. Well, is that what you call the man that reads the compass and keeps you on your line, a compass man?           A. Yes.

(Testimony of Ross Winans.)

Q. And it is his job to set the compass, then to to sight and to give you signals to tell whether you are on the line or not?

A. Yes, most always we carry a red rod marker with colors on it. I have done lots of that with parties of surveyors, rod work.

Q. Were you surveying the lots at that time, or were you surveying merely the reserved area?

A. We were running the boundaries around the 25 acres; that was all.

Q. Doing what?

A. We were running the boundary around 25 acres.

Q. You were not surveying the reserved area at all, but——

A. That is with surveyors. Later they came back, Mr. Parker and Stegmann came back and laid out those 8.88. [1755]

Q. Yes, but what I am getting at—let me finish my question first, if you will—as I understand you then, you and Mr. Parker and his son——

A. Yes.

Q. ——were surveying the boundaries of Lot 1. You were not surveying the reserved area?

A. No.

Mr. Strayer: That is all.

The Court: He did not say that.

Mr. Strayer: He did not? What did he say?

The Court: Did you not testify that when the surveyors were there you surveyed the boundaries of Lot 1, but when Mr. Parker was out, then you

(Testimony of Ross Winans.)

were surveying the reserved area; isn't that your testimony?

The Witness: Yes, that is correct.

Mr. Strayer: Then may I go back, then?

Q. You and Mr. Parker and his son, then, were surveying the reserved area?

A. That is correct.

Mr. Strayer: That is all.

The Court: Mr. Jaureguy, you may proceed again if you have any questions.

Cross-Examination

(Continued)

By Mr. Jaureguy:

Q. This typing here, do you typewrite with what they call the [1756] touch system? How did you work that? Did you type that yourself?

A. I did. What is wrong with it?

Q. Well, it looks very good to me. Did you do that at home? A. Certainly.

Q. In your own typewriter?

A. Yes, I own one.

Q. You put anything in there that you thought was of any importance in the case?

A. Well, as I remembered it.

Q. When did you do this?

A. Well, that has been done for more than a year.

Q. That has been done more than a year?

A. Some of it, not this piece.

(Testimony of Ross Winans.)

Q. I mean, this piece, when did you do this (indicating)?

A. Oh, I just recently copied that so as to get a little more——

Q. What did you copy it from?

A. From my old notes.

Q. Do you have your old notes here?

A. No.

Q. A week ago, would you say?

A. Oh, no, last evening.

Q. Last evening, and you put in here everything in this case that you thought of importance, didn't you? A. Well, as I remember it. [1757]

Q. Why didn't you put in here that your brother, Paul, told these fellows about the bum title you had? Didn't you consider that of importance?

A. Well, that is for you to figure out, not me.

Q. Why didn't you put in here that your brother, Paul, told Stegmann that they were trying to get an act through Congress to fix up your title?

A. It took too much time.

Q. Too much time?

A. Evenings are not long enough.

Q. Evenings are not long enough. Well, you have got a full page, single-spaced, here.

A. Yes, well, I used to do a good deal of that work on the old Premier machine.

Q. How long did it take you to copy that?

A. Oh, just an hour or so.

Q. An hour or so, but you didn't put anywhere in there of anything about a defective title?

(Testimony of Ross Winans.)

A. No.

Q. Or that your brother or you told anybody about the title being defective? A. No.

Q. Didn't your brother tell you that was important?

A. No, he had nothing to do with it.

Q. When did you first learn that that matter was of some [1758] consequence in this case, whether your brother had told anybody about the defective title?

A. Oh, that right now I wouldn't know. I just don't.

Q. Would you say last summer some time?

A. 1952?

Q. Yes.

A. No, whenever this—more likely after the summons was served.

Q. Sometime after the summons was served?

A. I went into it.

Q. Now, you said a little while ago, as I heard you, that the surveyors, Haynes and Bogar, were there when Stegmann went to the corner and looked down over the forty and says, "I want this forty acres."

A. That's right.

Q. They were there that time? A. Yes.

Q. Is that the first time that you ever knew that Stegmann wanted the forty acres? A. Yes.

Q. Up to that time you thought he only wanted 25 acres? A. That was all we were offering

Q. And all you were discussing?



(Testimony of Ross Winans.)

A. Yes, of course, we knew, we had the deed for 65 acres.

Q. So that on the 11th when you say your brother was telling [1759] Stegmann about the title to the forty being defective, at that time as far as you knew Stegmann was not going to buy the forty?

A. He didn't care whether he did or not.

Q. I say, as far as you knew he was not going to buy it.

A. Yes, didn't care whether he bought any of it.

Q. No, my point is whether at that time you did know that he was wanting to buy the forty?

A. No.

Q. And the first time that you learned that he wanted the forty was that day that Parker and Haynes were up there?

A. Yes, he says, "I want it."

Q. He wanted it?

A. I don't know who he was talking to, but that is what I heard him say.

Q. Which part of it did Chet Parker say he wanted?      A. Well, that was not discussed.

Q. That was not discussed?      A. No.

Mr. Jaureguy: All right, thank you.

(Witness excused.)

The Court: We will take a short recess.

(Afternoon recess taken.)

Mr. Krause: I think this statement should go in after they used it to examine him.

The Court: A self-serving declaration. They could put it [1760] in if there was any prior contradictory statement, but I don't see how you could use it. I am going to reject the offer unless the parties agree that it will go in.

Mr. Strayer: I rather think it ought to go in, your Honor, and I am going to offer it as our exhibit.

The Court: On what ground?

Mr. Strayer: Well, there are some contradictions between the statement and his testimony, and I think it should go in as explanatory of what his testimony is. There is only one conversation referred to in the document. All the rest seems to relate to people, places and dates.

Mr. Jaureguy: If he is offering it for that purpose only, I think it is admissible for impeachment, and there is no objection; but if he is offering it as substantive evidence of what goes in or corroborative evidence of what goes in, I object on the ground of self-serving.

The Court: I think you are absolutely right, Mr. Jaureguy.

Mr. Jaureguy: Thank you, your Honor.

Mr. Krause: I would say this, your Honor, that they read from this statement to the witness.

Mr. Jaureguy: Who read?

Mr. Krause: Mr. Jaureguy did. You read from the statement while you were interrogating him.

Mr. Jaureguy: Tell me one word I read.

Mr. Krause: For instance, you made a statement

in here that [1761] there was nothing said in here about a conversation.

Mr. Jaureguy: That is not reading from the statement.

Mr. Krause: Well, it is drawing a conclusion from the statement.

Mr. Jaureguy: That is correct.

The Court: He has a right to do that. It is only admissible on the ground of impeachment, and in view of the fact that it has been offered by Mr. Strayer for that purpose, it is admissible, but it is not admissible for any, to corroborate anything he said or as substantive evidence.

Mr. Krause: I did not claim it was evidence of that sort, your Honor, but it has always been customary, at least it is my observation, that when counsel interrogates a witness about notes that he made, that the notes go in.

Mr. Jaureguy: By the adverse party.

Mr. Krause: It may be they go in by the adverse party.

Mr. Jaureguy: Yes, that is the wording of the statute.

Mr. Krause: At any rate, Mr. Strayer offered it.

(Document, memorandum of August 11th, 1951, marked Plaintiff's Exhibit 93 for identification.)

The Court: It may be admitted.

(Document marked Plaintiff's Exhibit 93 for identification was received in evidence.)

Mr. Krause: Call Mr. Bogar. [1762]

LAWRENCE BOGAR

a witness produced in behalf of third-party defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Mr. Bogar, where do you live?

A. Where do I live? In Portland, southwest, 2605 Southwest Hamilton Street.

Q. What is your occupation or profession?

A. Engineering, civil engineering.

Q. Who are you with at the present time?

A. I am with the United States Army Engineers.

Q. Are you a licensed engineer?

A. Licensed in Oregon, State of Oregon.

Q. Your name has been mentioned here as one of the surveyors who went up to survey this property on Lost Lake in August of 1951.

A. **That** is right, I was up there the 18th of August, Saturday.

Q. Do you recall the date on which you were there?      A. 18th of August.

Q. Did you have any other assistant with you, or any other surveyor?

A. Mr. Retlaw Haynes went up with me from Portland.

Q. Retlaw Haynes. Now, about how long were you up on the property engaged in your [1763] survey?

A. Well, a good eight hours at least.

(Testimony of Lawrence Bogar.)

Q. When you came down from Lost Lake, did you stop at Paul Winans' place?

A. Yes, definitely.

Q. By the way, had Mr. Walter Stegmann been up there while you were up there surveying?

A. The entire time that I was up there, practically. I was up there a few minutes before was all.

Q. You drove up in your own car, did you?

A. Yes.

Q. And Stegmann came up in a different car?

A. Yes.

Q. Do you know whether you left Lost Lake to go to Paul Winans' before Stegmann did, or did Stegmann leave first?

A. Lost Lake, I think I left a minute before, but he arrived, he passed me on the way down. He was back before I got back because I don't—

Q. Was Rose Winans down there before you got there, or was Ross with you?

A. You mean was he at the lake or at the—

Q. No, on the way down back to the Winans place?

A. He rode up with us, but I don't think he rode back with us.

Q. Will you just tell us what took place after you got back to Paul Winans' place?

A. Well, when we arrived we waited about half an hour, well, [1764] maybe about 20 minutes to a half hour while Stegmann and Mr. Winans were in the building.

Q. Now what building are you referring to?



(Testimony of Lawrence Bogar.)

A. The building, it is on the left-hand side of the road going up. There was an office, he had a desk in the room there. I forget whether it was a home or not.

Q. Walter Stegmann and Paul Winans were in there, you say, for about how long?

A. Oh, I would say 20 minutes, half hour, something like that.

Q. Where were you and Mr. Haynes at that time?

A. Well, we were outside right by my car.

Q. By the way, do you recall whether there was anyone there with Walt Stegmann?

A. You mean at Lost Lake?

Q. Yes, at the Lake.

A. There was two of them, two people, yes.

Q. Two people besides Walt Stegmann?

A. No, one person besides Walt Stegmann.

Q. Do you know who this other person was?

A. Well, I was introduced to him, but I have forgotten the name now.

The Court: Do you know if he was any relation of Mr. Stegmann's?

The Witness: I really don't.

Q. (By Mr. Krause): Well, was he traveling with Walt Stegmann? [1765] A. Yes.

Q. Can you tell us something about his appearance?

A. Not definitely, not enough to describe him, no.

(Testimony of Lawrence Bogar.)

Q. After Walt Stegmann and Paul came out of Paul's office, what did you do?

A. We went in the office and figured up the time, and he paid me, paid both of us by check, one check for both of us, and we made arrangements to come back next Saturday and finish up the survey. Mr. Winans gave me his telephone number and said he would like to have us back the next following Saturday.

Q. What time was that, approximately, when you got through and got your check and were ready to leave?

A. Oh, it must have been around eight o'clock, something like that.

Q. Did you leave for Portland when you had finished this and gotten your check?

A. Yes.

Q. Now, when you came out of this office, were Walt Stegmann and this other man still there?

A. No, I don't believe they were there. Never saw them.

Q. Was there anyone around there at the time that you left besides Winans and Ross Winans?

A. Not to my knowledge. We waited until they got through with their business so we could go in and get straightened up on our pay that day. [1766]

Q. Did you, while you were there, Mr. Bogar, see Mr. Parker, who is the gentleman sitting just behind the attorneys there; did you see him up there on the 18th day of August?

A. I don't believe so, no.

(Testimony of Lawrence Bogar.)

Q. Was he the man that was with Mr. Stegmann up at the lake?

A. No, I believe the other fellow was a younger fellow than that.

Mr. Krause: You may cross-examine.

Cross-Examination

By Mr. Ryan:

Q. When you came down to the Winans' office or gas station there, were you in a hurry to get on to Portland? A. Well, sort of.

Q. Did Mrs. Winans bring you over some lemonade?

A. Yes, somebody brought, I forget whether it was lemonade. It was some drink or something. We were quite thirsty.

Q. This gentleman that was apparently with Mr. Stegmann, was he outside with you people?

A. I don't know, could have been. I know I and Haynes were together. Whether he was——

Q. Were you and Mr. Haynes going over any of your notes made on the survey?

A. Well, briefly. There wasn't too much to go over right then.

Q. This was about dusk? Was it dark yet?

A. Just getting dusk, as I remember it. We did look at the [1767] notes.

Q. Did you say anything to Mr. Winans about wanting to get paid so you could leave?

A. No, we didn't. Mr. Winans mentioned that before we left Lost Lake. He said, "I will pay

(Testimony of Lawrence Bogar.)

you before you leave," so that is the reason we waited.

Q. You waited because rather than have the money sent to you, you would get it up there?

A. That is right, he told us to wait.

Q. Did you go into the office to get paid?

A. Yes, we went into the office.

Q. Was Mr. Stegmann in there at all when you went in?           A. No.

Q. Can you remember whether he was outside or whether he left immediately, or what do you remember?

A. As I remember, Mr. Stegmann and Mr. Winans came out of the office together. Mr. Winans came over to us, said he would take care of us now. He had time to take care of us, so we went in the office and then we transacted our business. He paid us our check and gave me the telephone number and instructed us about coming back the following Saturday.

Q. Then what happened?

A. Then we left shortly after that.

Q. I mean, by "shortly after that" you mean you left when the business was done; you got in your car and left? [1768]

A. That is right.

Q. You didn't remain around the area?

A. Oh, I imagine a couple of minutes, something like that is all. We just left practically immediately.

Q. Did you see Mr. Stegmann's car?

A. No, I didn't.

(Testimony of Lawrence Bogar.)

Q. By that do you mean it was not there or you cannot remember that you saw it or you didn't see it?      A. It wasn't there, I don't believe.

Q. You were up all day in the Lost Lake area working on the survey?      A. That is right.

Q. Were you working with Mr. Haynes?

A. That is right, Mr. Haynes. Mr. Haynes and myself did the surveying. We had several others there to cut brush, just help out.

Q. Who were these several others?

A. Well, Ross Winans and Paul Winans and Stegmann, and the other fellow, and a couple of boys, I believe, Winans boys.

Q. Were they working separately or running ahead of you? How was that done?

A. Well, Ross Winans helped work more or less directly with us chaining. We were chaining and running transit, and the rest of the gang were more or less cutting brush, clearing the way, and Paul Winans was more or less ahead most [1769] of the time.

Mr. Ryan: That is all.

### Cross-Examination

By Mr. Jaureguy:

Q. I take it on this survey you made notes, field notes or something?

A. That is right.

Q. What happened to those?

A. I have them.



(Testimony of Lawrence Bogar.)

Q. You have them here? A. Yes, sir.

Q. You did not make a map?

A. Yes, we plotted up—we ran from the meander corner over to the quarter corner, and not knowing our exact course we meandered over to it and then we tied in with the quarter corner. In order to get the distance, we had to draw up a map and compute the distance.

Q. What happened to the map?

A. Well, I think Haynes has a copy of it. I have the notes.

Q. Then the second time you made for the reserved area, did you not?

The Court: He did not come back the second time.

The Witness: I did not come back, only just one Saturday there.

Q. (By Mr. Jaureguy): So you were [1770] only——

A. What we started out to do was just run around this 25 acres, and we went over to the quarter corner and went south about five hundred some feet.

Q. You did not go back the second time?

A. I did not go back the second time.

Q. Did Mr. Haynes; do you know?

A. Retlaw did. Retlaw Haynes came back with another fellow.

Q. So you did not know anything about the reserved area? A. No.

Q. Well, in determining when you should come

(Testimony of Lawrence Bogar.)

back again, was there any consultation with Stegmann?

A. Not on my part, there wasn't. I didn't have any business with Stegmann whatsoever on any occasion.

Q. When you left it was light enough when you got in your car so that you could see whether there were other cars there?

A. Oh, yes; it was getting dusk; it was not dark.

Q. Eight o'clock, I think you said?

A. Around eight o'clock, something like that.

Q. Well, now, you say that it was up at the lake that Mr. Winans told you to wait for him?

A. Oh, he mentioned that around, just about quitting time.

Q. It was not after you got down to his place that he asked you to wait outside while he went inside with Stegmann?

A. No; that is right, no, he didn't. When we got back they were inside the building. We waited outside. [1771]

Q. Without anybody's request.

A. Without anybody's.

Q. I mean without anybody's request except what you had gotten up to the lake?

A. That is right.

Q. Then the third man you have not identified that was with Stegmann, was he outside at the time?

(Testimony of Lawrence Bogar.)

A. I don't know whether he was outside or inside.

Q. Did these two men, Stegmann and the other man, did they have two cars or one; do you know?

A. One car.

Q. One car, and you had a car?

A. That is right.

Q. And Mr. Winans had a car?

A. That is right.

Q. So there were three cars there? And where did Mr. Winans park his car?

A. Mr. Winans' car was parked, as I can picture it, it was directly in front of the building.

Q. Where did Mr. Stegmann park his car?

A. I parked my car in front of Winans' car. I don't remember Stegmann's, the exact location of it I don't remember, but I remember mine particularly.

Q. Well, how do you know, then, whether Stegmann's car was not there when you left if you do not remember where it was parked? [1772]

A. We waited outside definitely until they were through because they both came out.

Q. I understand, and you——

A. And said goodbye, and he said, "I will take care of you fellows," and we went inside.

Q. I understand.

A. When I came back out I never saw them.

Q. Never saw them?           A. Never saw them.

Q. But you do not know whether their car was

(Testimony of Lawrence Bogar.)

there or not because you do not know where their car was parked; isn't that correct?

A. Well, not definitely. I cannot locate the definite location of it now.

Q. So you do not know when you left whether their car was still there or not?

A. Not—to my recollection, it was not there.

Q. I thought you told us you did not know where it was parked?

A. You mean when you say I did not know where it was parked, did you mean did I know of the exact spot or exact location it was in the vicinity?

Q. I do not know. I am just taking your testimony. Now, isn't this a really fair way to state it, that when you went in there you understood that Stegmann's business was all over, and so you just assumed that he was gone? [1773]

A. More than assumed. I never saw the car. As I remember it, the car was not there.

Q. You did not have any reason for wanting to know whether Stegmann was still around or whether he was gone, did you?

A. I had no interest in it, no.

Q. I know, but at that time you had no reason for looking around to see if Stegmann was there, if the other man, or if their car was there, you had no reason? A. No, no definite reason.

Q. Not even curiosity, did you?

A. Well, might have been curiosity, but I had no business to conduct. That is for sure.

(Testimony of Lawrence Bogar.)

Mr. Jaureguy: That will be all.

Cross-Examination

By Mr. Buell:

Q. While you were up on the property, Mr. Bogar, did you have any particular conversations with Stegmann as to what his interest in the deal was?

A. No, as far as Mr. Stegmann was concerned, we were—we had very little conversation. We were busy all day. We were trying to get through and were—hardly any conversation, you might say.

Q. Was Mr. Stegmann cutting brush?

A. Well, yes, helping.

Q. Was he taking any of the readings [1774]  
or——

A. No; you mean on any of the surveying?

Q. Yes.      A. No, definitely not.

Q. You did not see him make any notes of what you were doing either, did you?

A. No, I never——

Q. Did you discuss surveying with Stegmann at all while you were up there?

A. Discuss, what do you mean discuss?

Q. Discuss the technical aspect of the surveying job?      A. No, sir.

Q. The job you were doing?      A. No.

Mr. Buell: Nothing further. Thank you, Mr. Bogar.

Mr. Krause: I have nothing further.



(Testimony of Lawrence Bogar.)

Cross-Examination  
(Continued)

By Mr. Ryan:

Q. While you were waiting outside of the office there, did you see Paul Winans come out of the office with a piece of paper in his hand, or come out of the office and go up towards the house on the property?

A. When, when are you referring to?

Q. During this period in which you were waiting, Mr. Bogar?

A. I can't say that I——

Q. Did you see Walter Stegmann come out and go in again? [1775]

A. No, I didn't. I don't remember of seeing him come out and go in.

Mr. Ryan: That is all.

Examination by the Court

Q. Do you recall what kind of car Stegmann was driving?

A. It was, I believe it was green.

Q. A two-door sedan or four-door sedan, or an open car?

Mr. Jaureguy: Or a Jeep?

The Court: Or a Jeep?

The Witness: No, I believe it was a green Buick. I can't say for sure.

The Court: Did you see Stegmann's car when you arrived at the Winans service station?

(Testimony of Lawrence Bogar.)

A. When we arrived?

Q. Yes. A. Yes.

Q. When you left did you not see it?

A. That is the best I can remember, as I remember.

The Court: That is all.

Mr. Krause: That is all, Mr. Bogar.

(Witness excused.) [1776]

### PERCY F. BUCKLIN

a witness produced in behalf of third-party defendants, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Krause:

Q. Mr. Bucklin, you live at Hood River, do you?

A. I do.

Q. How many years have you lived there?

A. Well, since 1911.

Q. Your business is what? A. Banking.

Q. You are the manager of the First National Bank at Hood River? A. I am, yes.

Q. You were the manager in 1951?

A. Yes.

Q. Is that a branch of the First National in Portland? A. That is.

Q. Do you know Paul Winans? A. Yes.

Q. Had you had business dealings with him prior to the year 1951? A. Yes, quite a while.

Q. For some years?

(Testimony of Percy F. Bucklin.)

A. A number of years. [1777]

Q. Do you recall about Paul Winans coming in to see you about August 10, 1951, to talk to you about ascertaining the financial responsibility of a person who was talking about buying some property of theirs at Lost Lake? A. I do.

Q. You wrote a letter about that time to the First National Bank at McMinnville; did you not?

A. Yes.

Q. Would you please take a look at this Exhibit 319 and see whether that is a carbon copy of the letter which you wrote? A. Yes, it is.

Q. Do you recall why you were writing to the First National Bank of McMinnville?

A. As I recall, Mr. Winans had asked me previously to write to the First National Bank of McMinnville to see what financial information we could obtain on Mr. Stegmann.

Q. You mentioned that the transaction here involved about \$80,000? A. That is right.

Q. Where did you get that figure?

A. That is the figure that Mr. Winans gave me. In order to find out whether he was financially responsible, we had to give some figure to use on that.

Q. Indicating how big a transaction it might happen to be? A. That is right. [1778]

Q. You had asked in this letter that they telephone you? A. Yes.

Q. Did you get a telephone call from the First National at McMinnville? A. We did.

Q. What did you learn about Mr. Stegmann?

(Testimony of Percy F. Bucklin.)

A. The First National in McMinnville advised us to call Mr. Chet Parker at Vancouver or to call or write, get in contact with him, in other words.

Q. Did they give you his address at Vancouver?

A. I believe they did. We had an address, and I think they gave it to us. Where we got it I cannot definitely say.

Q. Did you write a letter to Chet Parker?

A. We did.

Q. At Vancouver, and did you receive a reply from him?      A. Yes.

Q. I would like to have you look at Exhibits 320 and 321—they are already in evidence—to tell us whether that is a copy of your letter to Mr. Parker and his reply?

Mr. Jaureguy: All this has been gone over and admitted in evidence and identified.

The Court: There has been a lot of repetition in this trial, Mr. Jaureguy.

Mr. Jaureguy: Yes, that is correct.

The Witness: That is right. [1779]

Q. (By Mr. Krause): Those are the copies of your letter to Mr. Parker and a reply that you got from Mr. Parker?      A. Yes.

Q. Would you look at the dates on there, Mr. Bucklin, please, and tell me whether those are the, that is, of your carbon, what is the date of your letter to Mr. Parker?

A. August 11, 1951, is this.

(Testimony of Percy F. Bucklin.)

Q. August 11th, and to the best of your recollection, was that the date on which you did write him?

A. I believe that is right.

Q. When did you receive a reply from Mr. Parker?

A. Well, our date is here, August 16, 1951, that is our bank stamp on there, incoming mail.

Q. Your incoming mail receives a stamp as to the date on which it is received?

A. That is right.

Q. And that shows August 16?

A. Yes.

Q. Mr. Bucklin, how long had you known the Winans family prior to the summer of 1951?

A. Oh, since about 1920.

Q. Were you familiar with Lost Lake and the country immediately around Lost Lake?

A. Yes.

Q. Can you tell us whether the people of Hood River, Hood River [1780] County, whether Lost Lake was a matter of any interest to them?

Mr. Jaureguy: Objected to as incompetent irrelevant and immaterial.

The Court: I do not see the relevancy of that, Mr. Krause.

Mr. Krause: Well, may I tell your Honor what we claim? This Lost Lake was a matter of interest to the people up there, and if they saw Lost Lake in the newspaper, they read the article. We wish to connect the publication of these charges against the Winans and the fact that people were interested.

(Testimony of Percy F. Bucklin.)

The Court: All right, for that purpose, but limited to that purpose.

Mr. Krause: Well, that is the only purpose I can think of.

Q. You had answered that question, had you, Mr. Bucklin, as to whether the people in Hood River County were interested in Lost Lake?

A. All the people in Hood River County are interested in Lost Lake. That is one of their practically only playgrounds.

Q. Is it a matter—when anything is published in the papers regarding Lost Lake, is that a matter of interest to the people up there?

Mr. Jaureguy: Let my objection go to all of this line and analogous lines.

Mr. Ryan: I want to object to that, too, your Honor, on the same basis. [1781]

The Court: Objection overruled.

The Witness: State that again, sir.

Mr. Krause: Would you read the question, please?

(Last question read.)

The Witness: Yes.

Q. (By Mr. Krause): Did you read the articles in the newspapers up there regarding the filing of a complaint against the Winans, the complaint in this particular case here by Title and Trust Company?

A. Yes, I did.

Q. I would like to have you look at Exhibit 15-D and ask you whether that is one of the articles that you refer to regarding the filing of this suit?



(Testimony of Percy F. Bucklin.)

A. It would be hard to tell, but it is one of the articles. There were so many of them published, but as to definitely saying that that is one of them, that would be hard to say.

Q. You say it is one that you did read?

A. I have read articles that were published in Hood River, but as to whether this was word for word, I would not be able to say on that.

Q. Well, just the general substance of the article, is it, according to your best recollection, is it?

A. Well, I would say this, that that is about the way that the articles that I read, it is the material that was covered in those articles. [1782]

Q. I would like to have you take a look at this one. I hand you Exhibit 325, and ask you—this is an article in the other newspaper in Hood River—and ask you whether that appears to be similar to the articles that you read?

Mr. Jaureguy: Other newspaper, you say?

Mr. Krause: There are two newspapers.

Mr. Jaureguy: Your pre-trial list has all three of these in the same paper.

Mr. Krause: Is that right?

The Witness: At the present time there is only one newspaper in Hood River.

Mr. Krause: I beg your pardon?

The Witness: At the present time there is only one newspaper in Hood River.

Q. (By Mr. Krause): Yes, but at that time there were two; were there not?

A. I don't remember exactly the immediate——

(Testimony of Percy F. Bucklin.)

Q. May I see that Exhibit 325 again, and the other two?

Well, this Exhibit 325 should be listed in the exhibit list as a news item from the Hood River News instead of Hood River Sun, and the other one, 15-D, is the Hood River Daily Sun.

Well, Mr. Bucklin, did you hear these charges against the Winans discussed among people in Hood River at that time?

A. It has been very common discussion, yes.

Q. Did you, that is, your bank, as a result of the filing of [1783] this complaint and the publication of those articles, change its attitude toward Mr. Winans, or the Winans, in connection with business transactions?

A. Well, I might answer that question this way, that since the first of the year we have required substantial collateral for all of the loans we have against Mr. Winans.

Q. Did he have some unsecured loans from your bank at the time these charges were filed against him?

A. Yes, he did. It was the practice——

Q. What did you do about that?

A. We have combined all of those except one small one that I have made him recently. We have one small unsecured loan, but the rest of them are all combined with collateral security.

Q. Had Paul Winans a credit line with you whereby he could borrow without security?

A. We have never set up a definite credit line.

(Testimony of Percy F. Bucklin.)

We have loaned Mr. Winans over a period of a good many years, both secured and unsecured.

Q. What is the size of this loan that you made him without security since this complaint was filed?

A. I believe it is \$700.

Q. All of his other loans are secured?

A. That is right.

Q. Have the Winans borrowed extensively at times from the First National Bank, and in connection with what type of [1784] transactions?

A. Well, practically all of their logging operations have been financed by us over a period of the last 20 years, I should judge.

Mr. Krause: I think you may cross-examine.

### Cross-Examination

By Mr. Ryan:

Q. I do not quite understand your reason for consolidating. Did you say you consolidated all of the outstanding loans?

A. That is right.

Q. I do not quite understand your reasons for doing that.

A. They became due, and before we renewed them we required collateral to be put up before we would renew them.

Q. I am seeking the underlying reason why you required collateral. Would that be usual in your operations?

A. Not necessarily. We knew that Paul is possibly more or less, we might say, he is in a court action now and we didn't know what the outcome is

(Testimony of Percy F. Bucklin.)

going to be on this. We are merely playing safe like you would ordinarily do in a bank.

Q. In other words, it is your judgment that he might be subject to a lawsuit that influenced you to require security?

A. We don't take the chance on it if we can get out of it.

Mr. Ryan: No more questions. [1785]

### Cross-Examination

By Mr. Jaureguy:

Q. I take it that would be true regardless of the nature of the lawsuit unless the loan would be protected by insurance or something of that kind?

A. That is right, regardless of how the suit might go, why, we would take all the precaution we possibly could in any event.

Q. You would request security in case of a possibility he might lose a lawsuit?

A. That is right.

Q. You do not take it upon yourself to investigate and see what the merits are? A. No.

Q. What did you get as security?

A. We have a Caterpillar tractor.

Q. A Caterpillar. Is it new or used?

A. Oh, I believe it is about two years old.

Q. How long back did this line of credit extend that you spoke of that you gave him and the rest of the Winans family?

A. Do you mean this last renewal, or credit?

(Testimony of Percy F. Bucklin.)

Q. No, I mean prior to the lawsuit you say that they had a line of credit for unsecured loans.

A. We never had a line of credit. We have made both Paul and his brother loans, possibly for the last 20 years in their logging operations for whatever they might require, for machinery, [1786] payroll, whatever necessary.

Q. Unsecured?

A. Partly unsecured, and the machinery, as a rule, was on a secured basis.

Q. What were the loans that were unsecured?

A. Oh, it varied; payroll, and possibly purchase of timber, and whatever their expenses were in their loading operations. That would vary, of course.

Q. That extended back for many years?

A. Well, since they have been in the logging business, Paul and his brothers, I think that is about 20 years, I believe.

Q. Well, now, in the fall of 1943, for instance, they got money on unsecured loans?

A. That I couldn't say without looking up the records. If they needed it at that time, they undoubtedly did.

Q. If they needed money in the fall of 1943, then you loaned it to them?      A. Yes.

Q. Therefore, if they testified in this case that they needed money, why then, the answer is that they got money from the First National Bank?

A. Well, I believe we have loaned them money every time they required it.



(Testimony of Percy F. Bucklin.)

Q. The same thing would be true of the spring of 1944? A. Yes. [1787]

Q. In other words, right straight through, they could get whatever money they needed from the First National Bank?

A. Whether they got whatever they needed, I don't know, but we had always kept them supplied, I think, with whatever capital was required.

Q. Have you always loaned them what they asked for? A. Especially on equipment.

Q. Leave off equipment. A. All right.

Q. You mean on unsecured loans, have you always loaned them whatever they asked for?

A. Well, to my knowledge we have, yes. I was not making these loans in 1943 and 1944. I was not making loans to Paul at that time. I was in the bank, though.

Q. Did they always pay them when they became due at any time?

A. Not necessarily. We had to renew them from time to time a few times.

Q. Eventually they paid? A. Yes.

Mr. Jaureguy: That is all.

Mr. Strayer: No questions.

Mr. Ryan: No questions.

Mr. Krause: That is all, Mr. Bucklin, thank you.

(Witness excused.) [1788]



J. B. EDINGTON

a witness produced in behalf of the third-party defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Mr. Edington, where do you live?

A. In Hood River.

Q. How long have you lived in Hood River?

A. 25 years or so.

Q. What business are you in?

A. Plumbing and heating.

Q. Have you had business dealings with some of the Winans in connection with your business?

A. Yes, I have.

Q. Were you engaged in doing any work for any of the Winans during the fall of 1951?

A. I think so.

Q. Did you read the articles in the Hood River Sun and the Hood River News regarding the filing of a suit for false and fraudulent representations?

Mr. Jaureguy: We renew the same objection we made to the similar questions on the last witness.

The Court: Objection overruled.

Mr. Ryan: We wish to make the same objection for the record on behalf of defendant [1789] Stegmann.

The Court: Is Stegmann being sued for defamation, too?

Mr. Krause: Well, your Honor, may I make a little more extended statement of this?

(Testimony of J. B. Edington.)

The Court: Well, I have overruled the objection, so go ahead.

Mr. Krause: Well, at any rate, they are both being sued.

Q. Did you read those articles?

Mr. Strayer: May I object here? I do not know what Mr. Krause is shooting at now, but at the appropriate time, of course, we are going to contend that there is no basis whatever for any counter-claim against Title and Trust Company.

May we have an objection running to all this testimony as far as our client is concerned?

The Court: Yes.

Q. (By Mr. Krause): Mr. Edington, did you read the articles in the newspaper reporting the filing of this lawsuit against the Winans by the Title and Trust Company? A. Yes, I did.

Q. In which they charged them with falsely representing that they were owners of some property and inducing a person to pay a large sum of money for it; do you recall that? A. Yes.

Q. Mr. Edington, did you in your dealings with other business people hear any discussion of this lawsuit that had been brought against the Winans, by the people up there in Hood River? [1790]

A. You mean any question as to his ability to pay his bills?

Q. Well, I will get to that in a moment. I didn't ask that.

A. I didn't get quite your question.

Q. Did you hear that discussed, the fact?

(Testimony of J. B. Edington.)

A. Oh, discussed, very much so.

Q. That this lawsuit had been brought. Did you frequently hear it from other people?

A. Very much so.

Q. Now, was there any discussion by those people as to whether Mr. Winans or the Winans would be able to continue to meet there obligations?

A. There was a question, yes.

Q. Did you have any difficulty in deciding for yourself whether they might have difficulty in paying your bills?           A. I did.

Q. Did you change your method of doing business with them as a result of that lawsuit?

A. In one I did.

Q. In what respect did you change it?

A. Well, Mr. Winans was building two houses and he had one built and ready for another one, but he owed me money for the first one, some seventeen or eighteen hundred dollars. We was ready to go with the second one. I believe there was some preliminary work done on the second one, and before I went any further on the second one I told Mr. Winans I would have to have [1791] some money, and later on the news got around more about this suit deal, and I, like anyone else, was involved there for quite a little sum of money, for myself at least, and I began to wonder how good his credit was, how much I was going to get rooked, how I was out on a limb. That is all there was to it. That was my opinion on it.

Q. Had you had any discussions with Mr.

(Testimony of J. B. Edington.)

Winans about taking care of plumbing and heating work on a considerable number of houses that he intended building?

A. Well, not recently I haven't. I have before.

Q. No, I mean just prior to this time that this suit was filed? A. Yes, we had.

Q. And in which there were discussions that the building would be handled on a sort of a partnership basis between you and himself?

A. That is right.

Q. Did the filing of this suit against him have anything to do with your decision not to go in on the deal with him?

A. Well, the decision was made prior to this deal.

Q. Prior?

A. What you are asking me was made prior to the time even that the land was sold.

Q. Prior to the time that the land was sold and the suit was filed?

The Court: He made the decision to change his course of [1792] conduct?

Mr. Krause: Well, the previous question related to a tentative partnership deal between Mr. Edington and Mr. Winans on the completing of some houses, but he said that deal was off before the suit was filed.

You may cross-examine.

(Testimony of J. B. Edington.)

Cross-Examination

By Mr. Ryan:

Q. You say you required Mr. Winans to pay you some money on the \$1,700 he owed you on one of the houses before you would extend him any credit?

A. That is right.

Q. Did he pay you? A. Gave me \$500.

Q. Did you extend any further credit?

A. Yes, I did.

Q. To what amount?

A. Possibly five or six hundred dollars.

Q. Did you have any other security for that money?

A. No, other than I was extending my lien time, which was a benefit to me.

Q. Are you familiar with the houses where this plumbing was installed? A. I think so.

Q. Were you influenced in your fears about credit by any idea [1793] that these houses might not have been too easy to sell or to rent?

A. No.

Q. Have they been rented or sold?

A. I am not sure whether one of them has been sold. One is being finished right now. The other was sold. Whether it was sold before or after I don't know.

Q. How long a course of dealings have you had with Mr. Winans other than those you have described about the two houses?

A. How long has it been?

Q. Yes. A. Two years or so.



(Testimony of J. B. Edington.)

Q. Two years or so. Were there other houses?

A. No.

Q. That you supplied the plumbing?

A. No.

Q. It all relates to these two houses here?

A. That is right.

Q. Did you first supply plumbing and materials prior to the time this property was sold, or was this material all supplied after the property was sold?

A. Before it was sold.

Q. In giving credit to Mr. Winans and dealings with him, did you give any thought to his holdings of property at Lost Lake?

A. No, I would not say I did. [1794]

Q. Had he ever discussed it with you?

A. No, other than he had property, that was all. I didn't ask him where it was. In fact, I don't believe I knew it.

Mr. Ryan: That is all.

### Cross-Examination

By Mr. Jaureguy:

Q. What was this partnership deal that you mentioned in your direct examination?

A. That was possibly three years ago, some three years ago. Mr. Winans first had the idea of building a bunch of houses here. Being I was in a business somewhat related to construction, he wanted me to go in with him and build a bunch of houses up there, which at the moment I could not say. I did not think it was for me.



(Testimony of J. B. Edington.)

Q. Well, did you ever look favorably on it?

A. No.

Q. You did not look favorably on that at all?

A. No; no, never did.

Q. You did not go into it and then abandon it?

A. No.

Q. Why not. I mean, why didn't you go in with him on it?

A. I didn't think I could make some money on it. Unless I could make some money on it I was not interested.

Q. That is a pretty good answer.

Now, as I understand it, your change in your credit policy [1795] toward Mr. Winans was the result of the filing of this lawsuit?

A. That is right.

Q. If the paper had said merely that Mr. Winans had been sued in Portland for a hundred thousand dollars, you would have taken the same course; would you not?      A. Possibly.

Q. If that is all the paper had said?

A. Possibly I would.

Q. In other words, you are like the witness before you, that if a man is involved in a lawsuit where he might get stuck, why that influences your credit policy toward him; is that about it?

A. I would think so.

Q. Yes, surely. That is all.

Mr. Buell: That is all.

(Testimony of J. B. Edington.)

### Redirect Examination

By Mr. Krause:

Q. May I ask another question, Mr. Edington? Does it make any difference to you whether a man is just sued claiming that he owes some money or that he is being sued where they are charging him with fraud? If you are going to do business with him, does it——

A. I think there would be some difference there, yes.

Q. Which do you consider to be the, to have the greatest bearing upon your having business relations with another person?

Mr. Jaureguy: I object to that. We are talking about this [1796] man's relations and his conduct and his action.

The Court: Related to Mr. Winans.

Q. (By Mr. Krause): Well, you said that if it had just been a lawsuit against him, you might possibly have done the same thing. I mean about tightening up with respect to giving him credit. Did the fact that he was charged with fraud in this lawsuit have anything to do with your decision?

A. I would say perhaps some.

Mr. Krause: I think that is all.

### Recross-Examination

By Mr. Jaureguy:

Q. Well, didn't the editor of this same article assure you that that fraud charge was false?

A. That is why you are having this trial, I think.

(Testimony of J. B. Edington.)

Q. That is correct.

A. I would not believe any editor or anybody else until a case like this was completed, until I saw the end of it. Does that answer your question?

Q. No, but I think it will do.

A. Well, then, good enough.

Cross-Examination

By Mr. Strayer:

Q. I want to know, Mr. Edington, when you read that article in the newspaper, did you believe that perhaps Mr. Winans was a swindler or a crook of some kind? [1797]

A. Well, there we go again to the previous question. Why believe what you read in a newspaper?

Q. Well, did you believe it?

A. Yes and no, not conclusively, no, I didn't.

Q. Did it create doubts in your mind; is that what you mean to say?

A. Well, regardless whether Mr. Winans, Mr. Jones, or Mr. Smith, I still would have disbelieved it.

Mr. Strayer: That is all.

Mr. Krause: That is all, Mr. Edington. Thank you.

(Witness excused.) [1798]

## JOHN H. SHELDRAKE

a witness produced in behalf of third-party defendants, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Krause:

Q. Judge Sheldrake, you live up in Hood River, do you? A. Yes, I do.

Q. You are the County Judge in Hood River County; are you not? A. Yes, I am.

Q. At the present time, how long have you been County Judge? A. Since January, 1936.

Q. Continuously?

A. No, excuse me, 1946.

Q. How many years have you known the Winans family? A. Oh, approximately 35 years.

Q. You are familiar with the Lost Lake territory up there, are you, in Hood River County?

A. I am very familiar.

Q. Is the Lost Lake area a matter of considerable interest to the people of Hood River County?

A. It is, very much.

Q. Why is that?

A. Recreational, it is the only fine recreation spot I believe we have in the county.

Q. When there are articles written in the newspapers relating [1799] to Lost Lake, is that a matter of interest to the people up there?

Mr. Jaureguy: I renew the same objection we had to similar questions.

(Testimony of John H. Sheldrake.)

The Court: I know, this is all going in under the objection.

Mr. Ryan: That applies to us, too.

The Court: Yes.

Q. (By Mr. Krause): Judge, could you tell us, do people read articles about Lost Lake in the newspapers in Hood River County?

A. Yes, they do.

Q. They do? A. They do.

Q. Now, do you know in general what businesses the Winans have been engaged in in Hood River County, particularly during the year 1951 and since that time? A. In the logging business.

Q. Well, is Paul Winans engaged in any other business besides the logging business?

A. They have a farm.

Q. Did you know that he was also building some houses up there, up there in the, what is it, the Purch Bowl area?

A. The Dee area, we call it.

Q. The Dee area.

A. He was building two houses, I know.

Q. Have you had business relations with the Winans in the past? [1800]

A. Doing my work in the county and Hood River for about 30 years, I have had many contacts with Paul Winans and the Winans family.

Q. Do the Winans in their logging operations have occasion to do business with the County of Hood River, too, and with the County Court?

A. With County Court, we occasionally issue

(Testimony of John H. Sheldrake.)

what is known as logging haul permits over county roads.

Q. Those things have to do with the maintenance and repair of county roads, too, do they?

A. That is right.

Q. Did you read the articles in the Hood River papers relating to filing of this suit by the Title and Trust Company charging the Winans with fraud and misrepresentation in connection with the sale of the Lost Lake property? A. I did.

Q. You read those articles. Did you hear them discussed, these articles and the charges against the Winans by people in Hood River?

A. Yes, I heard that.

Q. Was it a matter of common discussion, or what would you say about that?

A. It was quite common discussion.

Q. Did you hear views expressed regarding whether they believed these articles or disbelieved them? [1801]

Mr. Jauregui: The further ground, it is hearsay.

The Court: Objection overruled.

The Witness: Would you repeat that again, please?

Q. (By Mr. Krause): Did you hear any of these people in discussing these charges express any opinions as to whether they considered them true or not true, or whether they did not know what to believe?



(Testimony of John H. Sheldrake.)

A. I heard numerous discussions. Some discussions they thought they were true.

Q. Any other people express any other views?

A. Other people like myself probably didn't pass an opinion. I didn't myself.

Q. Were you familiar with the reputation that the Winans brothers had for honesty and integrity in Hood River, say, during the year 1951 and prior to that?

A. In my dealings with the Winans, I have not——

Q. I am not talking about your personal dealings with them now, Judge. Do you know what their reputation was for business honesty and integrity?

A. So far as I know, it was good, their reputation.

Q. First I wanted you to say whether you did or didn't know, you see, and then—you do know what their reputation was?

Mr. Jaureguy: Objected to as a leading question.

The Court: The first question is, do you know what the reputation in the community was. The Winans family lived in Hood [1802] River County for a long time, didn't they?

The Witness: Their reputation is good. Does that answer it?

The Court: How do you account for the fact that so many people believed the statement in the newspaper, then?

(Testimony of John H. Sheldrake.)

The Witness: I cannot go into other people's minds.

The Court: Did some people in their conversations say that they felt that Paul Winans was the type of man that could perpetrate a fraud?

The Witness: I think I have heard those remarks.

Mr. Krause: I think that is all. You may cross-examine.

Mr. Ryan: I have no questions.

### Cross-Examination

By Mr. Jaureguy:

Q. Now, you have heard remarks in Hood River County, as I understand it, that Paul Winans is the type of man that would perpetrate this kind of a fraud? A. I have heard those remarks.

Q. Yes, but still you say that prior to this event they had a good reputation in Hood River County?

A. I would say so.

Q. Can you give us an estimate as to how many people you have talked to about the—prior to this event, about Paul Winans, what kind of a—

A. How many, no, I couldn't tell you how [1803] many.

Q. Would you say as many as five?

A. Oh, more than that.

Q. How many, of what proportion of those before 1951 remarked that they didn't think he was such a good man from the standpoint of honesty and

(Testimony of John H. Sheldrake.)

integrity?           A. Would you repeat that?

Q. You say prior to this event you talked to several people about Paul Winans?

A. They talked to me, yes.

Q. And they talked to you, and what proportion of them thought that he was not quite on a par with the general run of people there as far as honesty and integrity was concerned?

A. Before this?

Q. Yes.           A. I couldn't tell you.

Q. Would you say as many as a third of them?

A. No.

Q. More or less?           A. Less.

Q. Less. Well, how many people since this happened have you heard say that they thought he was the type of man that would do this which was reported in the paper?           A. How many?

Q. Yes.           A. I couldn't tell you. [1804]

Q. Were there as many as a dozen?

A. Perhaps.

Q. Would you say there might have been as many as twenty?           A. Perhaps.

Q. Could there have been as many as fifty?

A. I doubt it.

Q. You doubt it, so that when we get up to fifty, why, that is just a possibility; you do not think so; you doubt it. Would that be a fair statement? I don't want to put words in your mouth, you understand, Judge. You doubt that there were as many as fifty expressed the view that he was the

(Testimony of John H. Sheldrake.)

type of man that would do what was reported he had done in the paper?

A. I doubt if it is fifty.

Q. Now, as I recall the first item in the paper at the time mostly expressed the belief that this charge was not true; do you remember that?

A. At the time, no, I don't.

Q. Beg your pardon?

A. I don't remember that.

Q. Do you remember what was in the paper?

A. Not exactly because although I read it, I had much other things to read and I don't pretend to remember a whole case that I read in the paper.

Q. I take it you do remember that the papers said he was made a party defendant in a lawsuit in the Federal Court in Portland? [1805]

A. That is right.

Q. And that it had some connection with the Lost Lake deal?      A. That is right.

Q. Aside from that you don't recall what was in it?

A. I could not state just what was in the paper.

Mr. Jaureguy: All right, thank you very much.

Mr. Buell: No questions.

#### Examination by the Court

Q. Did the county treat Mr. Winans any differently after the story occurred in the newspaper than they did prior to that time, with reference to permits for the use of the roads for logging purposes or anything else?

(Testimony of John H. Sheldrake.)

A. I would not say for sure that we have issued any permits since that time, for sure.

Q. The probabilities are if he asked for a permit he would get one anyway? A. I think so.

Q. Prior to the time that this story came out, do you know of anyone who made critical remarks about Mr. Winans? Mr. Jaureguy had asked of possibly one-third of the people at that time with whom you had talked made critical remarks, and I am asking you if you know of anyone who made critical remarks? A. I remember one.

Q. Just one?

A. I would not like to state the name, but I remember one. [1806]

Mr. Jaureguy: I would like to ask a question.

Q. If you cannot tell us, can you actually remember some that had occasion to tell you what a good, honest man he is, or was?

A. Had occasion to tell what a good, honest man he was?

Q. Yes, to tell you that——

A. I can't remember right now.

Q. You can remember that one was critical of him, and you cannot remember any that were actually laudatory or commendatory in their remarks?

A. Right off the bat I can't tell you.

Mr. Jaureguy: All right. Thank you.

The Court: Any other questions?

That is all, Judge.

(Witness excused.)

Mr. Krause: Your Honor, may I offer this 319? That is a carbon copy of a letter identified by Mr. Bucklin. Might I offer this so I don't forget it.

The Court: All right. Any objection?

Mr. Jaureguy: I think it is already in.

Mr. Krause: No, it was not in.

Mr. Jaureguy: The original is in but not the carbon.

Mr. Krause: The original was not produced. We asked you to produce it and you said you would agree that we could put a copy in.

The Court: All right, it is in now. [1807]

(Document, carbon copy of letter to First National Bank of McMinnville, McMinnville, Oregon, from P. F. Bucklin, dated August 10, 1951, previously marked Third-Party Defendant's Exhibit 319 for identification, was received in evidence.)

(Discussion off the record.)

The Court: In any event, it is admitted now.

(After further discussion off the record, the trial was adjourned to Wednesday, February 11, 1953, at 9:30 a.m.) [1808]



February 11, 1953, 9:30 A.M.

The Court: Mr. Krause, you may proceed.

Mr. Krause: Call Mr. Paul Winans.

PAUL WINANS

recalled in his own behalf and in behalf of the Third-Party defendants, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Mr. Winans, do you recall a meeting with Mr. Stegmann on the day prior to the execution of the option?      A. I do.

Q. Where did you have that meeting?

A. That took place in my own home.

Q. When, with respect to the date on which the option was signed, did you and Mr. Stegmann come to an agreement as to the price that was to be paid?

A. I place that as on or about August 1, 1951.

Q. Well, at that time did you have an agreement as to the entire property, or just a part of it, any part of it?      A. I didn't get that last.

Q. Did you have an agreement then for the both parcels or just one parcel? [1809]

A. Both parcels, tentative agreement.

Q. Why had there been that delay between about the first of August and the 11th of August?

A. The understanding was when we reached a tentative agreement that first I would refer the same proposition to Mr. Linville and his clients

(Testimony of Paul Winans.)

due to the priority which they held in the deal, and that Stegmann would see somebody else. He would talk it over with his wife, he said, and he would come to a conclusion, and he was to get in contact again in one week from date and let me know what his decision was, and I would have mine.

Q. During that intervening period did you discuss the matter with the other people that were interested in this, that is, your brothers and sisters?

A. You mean my brothers and sisters?

Q. Yes.

A. Oh, yes, I kept them constantly advised of all the developments at all times.

Q. Now, during the summer of 1951 I think that is as closely as the date was fixed, Bert Holtby, one of the forest rangers, testified to receiving a telephone call from you.

A. That was right. I called him.

Q. In regard to the property. Did you make such a call to him?           A. I did.

Q. What was the purpose of the call?

A. Well, the purpose was more, I believe, to keep a commitment [1810] that I had always extended to the Forest Service that I would prefer to see them in possession of our property than any private individual due to the fact that they would retain the lake area, the natural beauty of Lost Lake intact.

Q. Did any negotiations develop with the Forest Service at that time regarding a sale or an exchange?

(Testimony of Paul Winans.)

A. No, none at all. It was sort of left open. He said he would be interested, and I think that with the other events crowding up as it did that I didn't go back to him on it. In fact, I had no confidence that anything would result of it. It was simply a gesture to keep the commitment that I had made.

Q. On the day before the option was signed, you say—oh, you have already testified as to the other matters in between those two dates when you were on the witness stand before, but on the day before signing the option you had a meeting with Stegmann? A. Yes.

Q. What did you do at that time?

A. Well, he had been trying to locate me in Hood River. My sister had informed me so by telephone. I returned home. I scouted around a little around town to see if I could contact him, failed to do it, and I returned home. While I was eating supper, as we recall it, Stegmann drove in, came into the house.

Q. What did you do that evening with him?

A. Well, there was some general conversation, and then I believe, as I recall it, Mr. Stegmann asked me what our decision [1811] was in the matter, and I told him that contingent on all details being worked out satisfactorily that we felt that we could give him the deal.

Q. On the following morning, did you and Mr. Stegmann and your sister Ethel have a meeting?

A. We did.

Q. Where did that take place?

(Testimony of Paul Winans.)

A. That occurred in the old family home where my brother and sister reside.

Q. Was that prior to the time that the option was signed? A. It was.

Q. And your sister's home is right in that same vicinity where your office was, and your own home?

A. Oh, yes, I was working over there at the service station. I have a desk there. I never in my own mind have referred to it as an office, but I did have a desk there, and attended to some of the customers that came into the station and did my work at that place, and we had been working there. The distance over to the old family home where my father and mother lived is less than 200 feet.

Q. You and Mr. Stegmann went over there to Ethel's home? A. Yes, we did.

Q. What was the purpose of this call that you were making on Ethel?

A. Well, this was coming down to closing the deal. I had told [1812] my sister so, and I wanted her to know the full details of what we were doing.

Q. In giving her the details, what information did you give her? First, what was said by you?

A. Well, I recited to her the framework of the deal. I told her that we were selling, or agreeing to sell, under this option to our property in Lot 1, less a reservation of the acreage which has been mentioned so often, 8.88 acres, and for \$80,000 and that we were including along with Lot 1 the forty acres as commonly referred to as the back forty, or right

(Testimony of Paul Winans.)

or interest in it, whatever we had in it we were including, an additional price of \$20,000, total \$100,000.

Q. Did Mr. Stegmann have anything to say, or did he make any remarks about this transaction?

A. No, characteristically, he made no comment.

Q. What did you do after that?

A. Went back to the desk and proceeded to write up and complete the option.

Q. Which you finished some time after lunch, then?

A. Well, I believe it was. I am rather inclined to think that I had it done before lunch, but I think my lunch was held a little bit late because I invited Mr. Stegmann to lunch with me. I might say that the wife had prepared lunches that we were to take to Lost Lake with us, but instead of that we ate at home.

Q. How many times did you see Chet Parker between the date of [1813] the signing of the option and the delivery of the deed to Mr. Abraham in Vawter Parker's office?

A. Three times, as we have it, approximately August 27th, August 30th and, then, I think, just following Labor Day, somewhere around possibly Labor Day or the day following, which would be around the 3rd, I think, of September, 1951.

Q. The first time you saw him did you meet him, too? Were you introduced to him?

A. To Chet Parker?

Q. Yes.           A. That is right.



(Testimony of Paul Winans.)

Q. On this first occasion when you saw him, can you tell us what sort of clothes he was wearing?

A. I clearly remember that, some detail of that.

Q. How would you describe his clothes, the type of clothing and color?

A. He was wearing one of these standard cruiser's coats, they call it, green color.

Q. What other clothes?

A. I don't like to go into detail as to what kind of trousers or foot gear he was wearing, but I quite clearly remember that he was wearing what I would call a cloth, water-repellant hat, green, also, I believe a lighter shade than the coat that he wore.

Q. On this first occasion that you met him, it was just meeting him down at your own place? [1814]

A. In the service station.

Q. In the service station? A. Right.

Q. There has been some testimony here that they wanted to take you along, but you were too busy with other things.

A. Exactly to the contrariwise.

Q. What happened with respect to your going or not going with them on that occasion?

A. Well, the procedure was that Walt Stegmann brought him into the service station and introduced him as Mr. Chet Parker and as a surveyor that he had previously asked if he could bring with him to complete the survey. I happened to be working on a map which was an outline of—since we had failed to get anywhere with Stegmann on the job the previous Sunday—yes, Sunday is right—and I had



(Testimony of Paul Winans.)

worked up an enlargement off of a Metsker map, setting it out so that I could set out in particular details suggested apportionment of property, that is, on this 8.88 acres, and as he came in I was working on that, and immediately seeing that he was a surveyor, I showed him what it was, and Mr. Parker examined my work with what I would say an attitude of professional interest. He knew what it was all about.

Q. Of course, what I was asking about particularly, though, was how did it happen that you did not go up to the lake with them? [1815]

A. Well, I am right up to that. After this had gone on a little while, I said—I supposed I was going up with them. That was the understanding with Stegmann. I said, “Well, let’s get going and get up there.” Stegmann vigorously objected. He said no, no, he said, that with his help and the help of Mr. Parker’s boy who was outside in the car, that it would be all they needed, and they could take care of it all right. I didn’t like the idea very well, but I did agree to it and with the proviso that if their work was satisfactory it would be acceptable, otherwise not; that I reserved the privilege of bringing back surveyors I had had on the job before.

Q. When you were introduced to Chet L. Parker you had seen the name before; had you not?

A. I had seen it, yes, that is right.

Q. Where had you seen his name?

A. Well, I had made inquiries though the First

(Testimony of Paul Winans.)

National Bank directly with Mr. Bucklin, who testified here yesterday, and he had for us a report from the bank referring him to Chet L. Parker of Vancouver, Washington.

Q. Were you advised of that by Mr. Bucklin?

A. Yes, he told me that. Then when I was in there a day or two later he had a letter from Chet L. Parker vouching for Mr. Stegmann's financial responsibility and ability to carry through an \$80,000 transaction.

Q. The next occasion upon which you saw Mr. Parker was on the [1816] surveying trip, and that has been told about here in great detail?

A. On or about August 30th with a variation of a day or so one way or the other.

Q. I wanted before getting to that to have you look at that map again that is in evidence, 303.

(Exhibit tendered to witness.)

That map, as you testified here, was prepared at Mr. Parker's request by an engineer by the name of St. Louis, or a surveyor?

A. I have learned that since.

Q. I beg your pardon?

A. I have learned that since.

Q. That appeared here in the case, and upon notes that had been furnished to him by Mr. Stegmann?

A. That is what Mr. St. Louis told me.

Q. How were all of these lots, that is, there are

(Testimony of Paul Winans.)

quite a number of separate lots drawn on that Exhibit 303?

A. Well, truly, I do not have first-hand knowledge about that. I can only surmise.

Q. We do not want your surmises exactly, Paul. What I want to know is, was there any discussion between you and Stegmann regarding laying out any lots on the waterfront?

A. None whatever.

Q. As far as this reserved area was concerned, was that to be finally in one piece, or was it to be a number of lots?

A. No, it was not. There was a complete understanding between [1817] Stegmann and myself in closing the option that we were to reserve approximately one acre in the extreme northeastern part of Lot 1 right on the Lost Lake waterfront.

Q. What was the nature of the waterfront there on the northeast corner?

A. It was dry land, nicely wooded, very beautiful.

Q. At any rate, it was not swampy?

A. Oh, no, indeed.

Q. On the northwest corner of this Lot 1, what was the nature of the ground there?

A. Well, it is practically all swamp, marshy ground, some fairly firm ground. That applies to practically all that south, southern part of Lot 1.

Q. Where you finally got the reserved area was in that southeast portion, including the swampy ground?

(Testimony of Paul Winans.)

A. North—or rather—yes, south—southwest.

Q. Southwest corner?

A. Well, better to say south because it does take all that south section of Lot 1.

Q. When this map, 303, was presented to you by Mr. Stegmann, was there any conversation with him regarding the occasion for setting out the separate lots on the waterfront?

A. As shown on this map?

Q. Yes, did Mr. Stegmann say anything about that? A. No, nothing at all. [1818]

Q. Were you told by him as to what lines there would indicate the reserved area?

A. Well, he said that they would have to have all of that waterfront for quite a distance southwesterly on the lake shore, including the acre that we wanted to reserve in that portion.

Q. That you were not to get that acre?

A. No, he said he would have to have that. He said that is right where his wife wanted to build her house, right where we wanted to reserve this acre.

Q. Of course, a quarter of a quarter section is 1,320 feet on a side, isn't it?

A. North and south.

Q. Well, or east and west.

A. You mean this meandered?

Q. No, no, I am talking about a quarter of a quarter section.

A. Oh, yes, indeed, it should be 1,320 feet. Lots of times it varies.

(Testimony of Paul Winans.)

Q. However, is the waterfront there on Lot 1 only 1,320 feet in extent?

A. No, the lake frontage is crescent-shaped, and it will run nearer 1,500, estimated.

Q. When the final reservation was made of the property that you were to have, approximately how many feet of waterfront was in your reservation, and about how many feet were left?

A. Well, 900 approximately in our reservation, and 600, according [1819] to the description in the deed, more or less, went to Stegmann.

Q. Your final sale price was \$95,250?

A. That is right.

Q. Although the option called for \$100,000?

A. That is right.

Q. What was that reduction in the price for?

A. We kept approximately a little over, I believe, one and a half acres of ground additional to the 8 and fraction acres, running it to something over 10, 10 and a half, approximately.

Q. With whom did you compute how much of an allowance was, how much of a deduction was to be taken off of the purchase price?

A. I did, together with Walter Stegmann.

Q. How did you determine what method to use in fixing the value on the additional acre and a half that you were retaining?

A. Well, the approximate area had been determined on by Mr. Haynes, had computed it, and Stegmann said that he was agreeable to setting out



(Testimony of Paul Winans.)

the additional reservation in the deed, but he wanted as much money per acre as he paid for it per acre. Then on that basis we set up \$80,000 which was the consideration for Lot 1, divided it by approximately 25 acres, which resulted in the approximate figure of \$3,000 per acre.

Q. That is the way you arrived at your value?

A. That is right.

Q. But actually Stegmann was paying more, was paying \$80,000 for less than 25—— [1820]

A. Yes, I think that went over our heads at the time, both of us, because I didn't think of it and Stegmann certainly didn't raise the point, but, actually, it should have been 17 acres at \$80,000.

Q. Now, was there any other besides this approximately acre and a half that would have come, too—but the price was reduced \$4,750. Was there any other negotiations with Mr. Stegmann that covered that \$250?

A. Yes, there was another one of these areas that they had that Stegmann had marked out on this map.

Q. Let us get this straight, Paul. You say, "on this map." Now, that was an earlier map?

A. Yes, well——

Q. There is testimony about a later map. Which one was it?

A. Correct that this way. I think it showed on both maps. This was on the other one, the one that Stegmann presented on August 30th.

Q. Yes?



(Testimony of Paul Winans.)

A. Instead of cutting over an angle toward the east, that was straightened up and I think continued due south, which left a small area there that Stegman always won't pay for, so we allotted \$250 for that, setting a figure of \$4,750.

Q. That \$250, it was adjusted between you and Stegmann? A. That is right.

Q. I will just ask you generally, did you ever discuss what [1821] allowance was going to be made on the purchase price because of your additional reservation of property to yourselves, with Mr. Parker? A. Mr. Parker, none.

Mr. Strayer: Chet Parker or Vawter Parker?

Mr. Krause: Well, of course, I mean Chet Parker, not Vawter Parker.

Now that that comes up, did Vawter Parker have anything to do with the computing, with the three thousand—I mean, the price for the adjustment?

A. No, as I recall it, that was done by Stegmann and myself, and the results was passed on to Vawter Parker.

Q. Where was it done?

A. In Vawter Parker's office.

Q. Do you recall whether Vawter Parker was there at the time that you were making the computations? A. I know that he was.

Q. Was Mr. Haynes there at that time, too?

A. He certainly was.

The Court: We will take a short recess.

(Recess taken.)

(Testimony of Paul Winans.)

Q. (By Mr. Krause): I would like to direct your attention, Mr. Winans, to that document that you presented to Mr. Stegmann to sign in Mr. Vawter Parker's office. A. Yes. [1822]

Q. That is Exhibit 311. Would you like to see it?

A. I would like to see that.

Q. Could we have it for the witness, please?

(Exhibit tendered to witness.)

What is your best recollection as to which day it was that this was presented to Mr. Stegmann?

A. September 8, 1951.

Q. That is on a Saturday?

A. That is right.

Q. The first of two days in which you were in Mr. Vawter Parker's office?

A. That is right.

Q. What did Mr. Stegmann say when you handed it to him—well, what did he do with it first of all when you handed it to him?

A. I would like to just look it over for a moment as I have not seen it for quite some time.

Oh, this was following a line of sequence that I had planned in advance that when the reserved area was finally set out, it was time to set up some form of record that an agreement had been reached. That is covered in the first paragraph.

The second paragraph I set out that the deed of conveyance was to be delivered subject, "to any and all alleged claim or claims of the United States Government running against the northeast quarter

(Testimony of Paul Winans.)

of the northwest quarter, Section 16, Township 1 South, Range 8 East, conveying from the said Ethel Winans to the [1823] said Walter Stegmann, on or before one week after date hereof."

That was referring to the option.

Q. Now, did you hand that paper to Mr. Stegmann?

A. Yes, I handed it to him directly.

Q. What did Mr. Stegmann do?

A. Oh, he took more time than I have here to mull over it and think over it and finally said, "No, I don't think I would go for that." He said, "That would be the same as my admitting that I knew the title to that back forty was no good." He refused to sign it.

Q. At that time, besides yourself and Stegmann, there were who present?

A. Mr. Haynes and Mr. Parker.

Mr. Jaureguy: Mr. Vawter Parker?

Q. (By Mr. Krause): Vawter Parker?

A. Vawter Parker, correct.

Q. Let me ask you this. Before submitting that memorandum, Exhibit 303, to Stegmann, had there been——

A. This is 311, I think.

Q. 311, pardon me, yes, 311—to Mr. Stegmann, had there been any discussion about the title to the forty acres? I mean just on that day?

A. On that day, oh, yes. That was a joker throughout the day there.

Q. You have told us before just what you did

(Testimony of Paul Winans.)

discuss about? [1824]           A. Oh, yes.

Q. That is, the Government's claim and the necessity of an Act of Congress?

A. That is right.

Q. Could I have Exhibit 315, please? Pardon me, that has not been introduced. Would you hand that to the witness, please?

(Document tendered to witness.)

What is Exhibit 315?

A. An abstract of title, Caption Number 616.

Q. What property does it cover?

A. That covers the 65.88 acres in the Winans name.

Q. That is those Lots 1 and 2 that we are talking about?           A. That is right.

Q. What was that abstract prepared for, that is, why had it been prepared?

A. That was prepared for, to be submitted in connection with a loan that we were negotiating through Mr. A. B. Combs, an insurance agency in Portland.

Q. Who was the attorney representing Mr. Combs?

A. Senator Frank H. Hilton, not then senator.

Q. This abstract—there is also an extension of that abstract that you have there?

A. That is right.

Q. That is under the same number. What was the date of the preparation of the first abstract? [1825]           A. I know it was——

Q. On the last——

(Testimony of Paul Winans.)

A. I know it was twenty-three.

Q. It is on the last page of the first——

A. Last page 23.

Q. Of the first part of it.

A. This is a certificate. Do we find it on that, or don't we?

Q. Ought to be on—what is the date of the certificate?

A. Fourth day of October, 1938. That would be about right.

Q. Did you get a loan from Mr. Combs at about that time?

A. No, not a new loan. It was a renewal of a part of the original loan.

Q. It was a renewal? A. That is right.

Q. And it was secured by a mortgage on this property? A. A new mortgage, yes.

Q. Now, then, there was an extension. What is the date of the certificate on the extension on the abstract?

A. Date of the extension, I don't know just where to find that.

Q. Again on the very back page.

A. Very last page?

Q. Yes.

A. It covers the period from July 20, 1925, to October 4, 1938.

Mr. Jaureguy: Oh, no.

Mr. Lindsay: Look on the very back page. [1826]

The Court: Why don't you show it to him?

The Witness: The original, yes——

(Testimony of Paul Winans.)

Mr. Krause: Well, the original, we have covered that. Now we want the extension.

A. Oh, yes, the extension, pardon me. The extension is the fourth day of October, 1938.

Q. You are still on the original abstract. Now, here is the extension. A. Oh, yes, pardon me.

Q. The last page of the extension is April 16, 1946; is that right?

Mr. Jaureguy: Did you say April?

Mr. Krause: April 16, 1946, is the date?

A. Well, as to that extension, I don't know anything about it. That was done, I think, through Mr. Hilton's office.

Q. Well, the abstract says that it was prepared at Mr. Hilton's request.

A. Yes, brought down to date of that transaction; however, that was done through their office and not referred to me.

Q. I see, you had nothing to do with getting an extension?

A. No, so far as I know, it was up to that 1938 date. That is the first time I think that has ever been called to my attention that it had been extended to 1946.

Q. Was that in connection with another loan on the property that the extension was obtained? Or a renewal of a loan already [1827] on there, or can you tell us about that?

A. No, there was no renewal or anything like



(Testimony of Paul Winans.)

that. I think perhaps I have mentioned before that our family figures that we had this mortgage clear, paid out in 1943, 1944, and Mr. Hilton was bringing a foreclosure on it, and he probably brought that up to date in preparation for some court action.

Q. There was no such court action instituted, however?      A. No.

Mr. Jaureguy: You said there was not?

Mr. Krause: No.

The Witness: They might have filed a suit, but it was never completed.

Q. (By Mr. Krause): Well, were you served with papers?      A. Yes.

Q. You were?

A. I will correct myself there, yes.

Mr. Jaureguy: My mistake, it was not instituted. It was just filed.

Q. (By Mr. Krause): However, the Combs mortgage was one that you paid off at the time that this deal was closed?

A. Yes, we settled for a full sum of a hundred dollars.

Q. Besides having Mr. Bucklin make inquiries concerning Walter Stegmann's financial ability, did you inquire of anyone else to ascertain anything about his financial ability?

A. I did through several sources. [1828]

Q. Well, did you ask George M. Bracker of the Bracker Timber Company for information concerning him?

A. I believe that I wrote a letter to Mr. Bracker.

(Testimony of Paul Winans.)

Mr. Krause: I would like to have you examine Exhibit 301.

(Exhibit tendered to witness.)

Will you also hand him 302, please.

(Exhibit 302 handed to witness.)

Q. Is that Exhibit 301 a carbon of your letter addressed to Mr. Bracker? A. It is.

Q. What was the date of it?

A. August 2, 1951.

Q. Was that about the date on which you wrote a letter and sent it off to Mr. Bracker?

A. Oh, yes, I think it would be about even date.

Q. That date? A. Right.

Q. Did you get a reply from Mr. Bracker?

A. I am sure that I did.

Q. Is that the Exhibit that you have there, 302?

A. Yes.

Q. What is the date of Mr. Bracker's letter to you? A. August 3, 1951.

Q. About when did you receive that letter?

A. Oh, I should have received it on August 4th, mailed the 3rd. [1829]

Q. Do you recall whether you received it about that date? A. Oh, I am sure of it.

Q. Prior to the time that the option was signed?

A. Definitely so.

Mr. Krause: I would like to have in evidence 301 and 302. Would you show them to counsel, please, and also 315, the abstract and the extension.

(Testimony of Paul Winans.)

Mr. Buell: On the abstract, we have no objection to it, but I think the record should show at the time it goes in that it was not prepared by the Title and Trust Company.

Mr. Krause: Well, it was prepared by the Hood River Abstract and Title Company, and we will stipulate that it was not the Title and Trust Company.

Mr. Jaureguy: No objection from us on any ground.

\* \* \*

The Court: I will sustain the objection. 315 is admitted, but the two letters are rejected.

(Document, abstract of title Number 616 from the office of Oregon Abstract Company, Hood River, Oregon, previously marked Third-Party Defendants' Exhibit 315 for identification, was received in evidence.) [1831]

(Documents previously marked Exhibits 301 and 302 rejected.)

Q. (By Mr. Krause): The deed was delivered on the 11th of September to Mr. Abraham, the deed conveying this property? A. Yes.

Q. When did you learn whose name had been inserted in the deed as the grantee?

A. Very shortly following the delivery of the deed to Mr. Abraham.

Q. Well, was it the same day?

A. Oh, yes, within half an hour, I would say.

Q. From whom did you get the information?

(Testimony of Paul Winans.)

A. Through Vawter Parker who responded to a telephone call.

Q. You were still in Mr. Parker's office?

A. Yes, I was.

Q. Did you have any idea of anyone having obtained title insurance on the forty acres——

A. None whatever.

Q. ——up to the time that you delivered the deed?      A. Not at all.

Q. Now, had there been any conversation with Mr. Stegmann or Mr. Parker that you participated in or overheard where there was any reference to title insurance or——      A. Nothing whatever.

Q. ——or the forty acres [1832]

A. Nothing whatsoever.

Q. Was there any reference to title insurance for any part of the property?

A. You mean more than secured by Mr. Stegmann?

Q. Well, was there anything said about anybody obtaining title insurance on the property that you transferred at that time?

A. No, not that anyone obtained, not whatever.

Q. Ordinarily, the seller furnishes either an abstract or title insurance?

A. That has been my experience.

Q. Why didn't you furnish either an abstract or title insurance?

A. I was not asked to furnish it by anyone. I didn't feel myself obligated to, and I would not have attempted to furnish it showing clear title.

(Testimony of Paul Winans.)

Q. On either one of the lots?

A. Oh, I would have an abstract, but I would not have gone for title insurance.

Q. As far as Lot 2 was concerned, and as far as you know up to now, that was insurable, too, wasn't it?

A. Right.

Q. Lot 1—I mean Lot 1.                      A. Pardon?

Q. Lot 1?                      A. Lot 1?

Q. Yes. [1833]

A. We had the remainder of the original title insurance policy as per the endorsement on the policy itself remaining on Lot 1, and that I expected to deliver to the purchasers or submit to them.

Q. But no one ever asked you to furnish any title insurance?                      A. No, none whatever.

Q. When did you learn following the delivery of the deed that a dispute had arisen regarding the ownership to the forty acres?

A. I think the first information that came to me was through the press.

Q. By the press, are you referring to the Hood River press?                      A. Yes.

Q. Hood River papers in Hood River?

A. Hood River Sun and Hood River News.

Q. Did the Title and Trust Company at any time, or anyone representing them or claiming to represent them, ever interview you regarding this transaction?                      A. They did not.

Q. Prior to the institution of the suit?

A. They did not.

(Testimony of Paul Winans.)

Q. Do you know whether any of the other members of your family were interviewed by anyone connected with the transaction?

A. I know that they were not.

Q. So what was your first knowledge that you were going to be involved in a lawsuit; how did you obtain that? [1834]

A. When the complaint was served on us.

Q. After the complaint had been filed here, was it recorded in the Hood River newspapers?

A. Yes, that was simply a suggestion, though, that it might happen.

Q. At any rate, the—your first definite knowledge that you were to be included in the suit came from the papers that were served on you?

A. Right.

Q. How long have you lived up in Hood River County, Mr. Winans?      A. 65 years.

Q. Did the people in Hood River County, were they interested in the Lost Lake area?

A. Very much so.

Q. Was it a matter that people read with interest whenever there were any discussions regarding—

The Court: That is merely cumulative, and you have had three witnesses testify to the same thing, Mr. Krause.



(Testimony of Paul Winans.)

Mr. Krause: Yes, I would like to hand the witness Exhibits 323 and 324, 15-A, 15-B, 15-C, 15-D and 325, and ask him whether those were clippings that he took out of the Hood River Sun and the Hood River News that dealt with the sale of the Lost Lake property.

(Documents referred to tendered to the witness.)

The Court: Have all the attorneys seen those clippings? [1835]

\* \* \*

The Court: As I understand Mr. Krause's theory, it is that the Title and Trust Company did not file the action in good faith, and these articles are being introduced for the purpose of showing the damage; is that correct?

Mr. Krause: Correct; that is right, your Honor.

Of course, I just want to say at this time that good faith involves also the extent of your knowledge, and I do not like to just rest it on the statement of the Court that it is based on a lack of good faith.

The Court: Or it is reckless?

Mr. Krause: Reckless, a reckless disregard of our rights when they charged us with fraud without having any reason or basis for doing so. That is a lack of good faith.

The Court: Proceed. [1837]

\* \* \*

(Testimony of Paul Winans.)

Q. Following the publication of the filing of this complaint against you, Mr. Winans, did people in Hood River County question you about the complaint?

A. Yes, they began asking—about the complaint, you say, following the filing of the complaint?

Q. Yes, after it was reported in the papers up there that the complaint had been filed against you, were you stopped by people and they inquired about the complaint? A. Many times.

Q. Did they discuss with you the nature of the charges that had been filed against you?

A. They were curious about them, yes.

Q. Did they ask you to explain them?

A. Some of them did.

Q. Was that a matter that just occurred a few times, Mr. Winans, or how many, would you tell us?

A. Well, I would think it occurred continuously over a long period.

Q. Can you give us roughly the number of people that have asked you about this complaint that was filed against you and your sisters and [1840] brothers?

A. That would be, I would say, a matter of estimate, but all told I would imagine as many as a hundred.

Q. Was it a matter of any embarrassment to you to be charged with fraud? A. Yes, quite.

Q. Did it have any effect upon your own business operations?

(Testimony of Paul Winans.)

A. I am quite sure that it did.

Q. Can you be a little more specific? What was the nature of the business that you were engaged in, first of all?

A. Oh, personally, perhaps the most outstanding one at that time was the building of a couple houses I had and the development of, generally, the area of the land on which they were situated. And then I had other interests, of course. I have associated with my brother in the logging operation, and I am interested in a ranch.

Q. Tell us just how the filing of this complaint charging you with fraud interfered with your carrying on of your business that you had theretofore?

A. I have experienced a general all-around tightening of credit.

Q. Did you borrow money from the First National Bank of Hood River?           A. I did.

Q. What developed with respect to their extending credit to you? [1841]

A. Finally resulted in what had been current loans, open loans, were placed on a security basis at the desire of the bank.

Q. At the request of the bank?

A. That is right.

Q. With respect to your employment of subcontractors or people working on your houses, did you have any difficulty regarding your credit with them?

A. Decidedly so.

Q. How, in particular?

(Testimony of Paul Winans.)

A. I could name several. There is Tumalum Lumber Company, Carl Krieg, Eddington Plumbing and Electric Company, for three.

Q. Had you any other plans under way for financing your, this development of property that you have at Dee that were under way prior to the filing of this complaint?      A. Yes, I did.

Q. With whom were you discussing the financing?

A. Well, there were a number that I approached in the matter, but ordinarily I would have had no trouble getting money from, but I was turned down, those sources, and one in particular with a Mr. Nichols in Hood River that was very interested in the project, and when this came up, why, he frankly said that he could not go any further now.

Q. Was Mr. Nichols a man who had large sums available to you for investment?

A. Yes. [1842]

Mr. Ryan: Your Honor, I object to this evidence with respect to what Mr. Nichols said to Mr. Winans as purely hearsay. In fact, a good deal——

The Court: Objection sustained.

Q. (By Mr. Krause): Mr. Winans, have you had anything to do with assisting the attorneys in the defense of this case against yourself and your brothers and sisters, other than attending here in court?

A. Oh, yes, I have had many, numerous trips into Portland for consultation, and, of course, have submitted all the information that I had.

(Testimony of Paul Winans.)

Q. Including the time that you have spent in court here, how much of your time has been devoted to your assisting the attorneys making preparations in defending against these charges?

A. That is hard to measure, but it has been very great, I would say.

Mr. Buell: If the Court please, I do not believe that is a proper element of damage in any event in the case, the amount of time a party spends in connection with a suit.

The Court: I think he is asking for special damages of \$20,000 for, oh, that is for attorneys' fees.

Mr. Krause: May I point out what the purpose of this is? Mr. Winans is in business trying to make a living working, not spending time defending lawsuits.

The Court: Well, every defendant has to do that. [1843]

Mr. Krause: Yes, your Honor, but if this case was one where he was damaged in his business by reason of publication of these things, it includes time that he spends defending himself as to those charges, and it is damage to his business in the same way that other damages——

The Court: I am going to let it in.

Q. (By Mr. Krause): How much time did you say you devoted to this matter?

A. I done a tremendous amount of work at home, in Portland, and elsewhere, and I would say it would run, if it were consolidated, a long ways in excess



(Testimony of Paul Winans.)

of three months of my solid time within that period.

Q. Did you have a business and work that you were able to work on during those three months if you had not been engaged in this?

A. Certainly, this matter of time which had to be given to this matter has robbed me of my time I should be giving to my ordinary business.

Q. You employed my firm of Krause & Evans and Dennis Lindsay to handle the defense for you and your sisters and brothers? A. I did.

(Discussion off the record.)

Mr. Krause: Your Honor, I would like to offer the same stipulation that has been offered by other counsel, that if the Winans are entitled to attorneys' fees as part of their [1844] damages in this case, that we will make a statement at the time.

The Court: You have a different problem. The Winans are suing for \$70,000 general damages and \$20,000 for attorneys' fees.

(Discussion off the record.)

Mr. Krause: It came up during the direct examination. They asked whether he had agreed to pay \$20,000. He said he had not.

The Court: On direct examination?

Mr. Krause: Yes, when they had him on the witness stand. Is that right, gentlemen?

The Court: I do not remember that.

Mr. Krause: Pardon me. It was in the deposition; that is right.



(Testimony of Paul Winans.)

Mr. Jaureguy: In the deposition?

Mr. Krause: But the deposition is in evidence.

Mr. Jaureguy: But the question was withdrawn. He did not answer it and we went on a few pages and then we withdrew it.

The Court: Do you not agree that it is not reasonable value in this case; it is what the defendants have agreed to pay?

Mr. Krause: Well, the fact of the matter is that they have only agreed to pay what the services are reasonably worth, and there is no amount fixed. Now, I will ask Mr. Winans as [1845] to whether or not there has been any amount agreed upon and go into all that matter then.

Q. Mr. Winans, have you made any agreement with your attorneys regarding a definite fee to be fixed in this case?

A. No, we simply retained Mr. Krause's firm, and they thought that we would have to pay for a contingent, as I understand it, on the amount of the work that Mr. Krause and his associates would have to do.

Q. In general, that is your agreement with us, is that you will pay us what the services are reasonably worth? A. That is right.

Mr. Krause: I think you may examine.

Mr. Buell: If the Court please, I have here this proposed, or copy of the proposed bargain and sale deed with Mr. Stegmann's name on it that was referred to earlier in the trial which I would like to have marked now and show it to Mr. Winans.

(Testimony of Paul Winans.)

(Carbon copy of bargain and sale deed marked Plaintiff's Exhibit 94 for identification.)

### Cross-Examination

By Mr. Buell:

Q. Mr. Winans, that Exhibit 94 that you are examining, would you run through it and see if you recall having seen it before?

A. Well, without a complete analysis of the whole thing to pick out discrepancies, yes, I have seen that before. [1846]

Q. Was that one of the copies or proposed drafts or proposed forms of deed to be given in this case that was prepared during the course of conferences between you and Mr. Stegmann and attorney Vawter Parker on September 8th and 10th?

A. Yes, that is right.

Q. Was that prepared on a Saturday or a Monday, or can you recall?

A. Prepared on Saturday, the 8th.

Mr. Buell: We will offer Exhibit 94 in evidence.

Mr. Jaureguy: I do not recall that. May I see it?

Mr. Ryan: I don't think we have ever seen it. Is this one of the pre-trial Exhibits?

Mr. Krause: It was not a pre-trial Exhibit. We have no objection.

Mr. Jaureguy: Well, I would like an opportunity to question the witness a little bit.

The Court: Proceed.

(Testimony of Paul Winans.)

Cross-Examination

By Mr. Jaureguy:

Q. Who suggested that this form of deed be changed, you or Mr. Vawter Parker?

A. That is a little hard to state definitely. This was prepared on that date, and I know that there were several drafts of the deed prepared before we finally arrived at one on that date which was acceptable on that date, to Walter Stegmann. [1847]

Q. Well, that is the information I wanted, and I am glad to get it, but it does not in any way answer the question I asked you.

A. Restate, please, and I will try——

Q. First I will ask you some more about that.

You say this was prepared on that date. What date was that?

A. September 8th, 1951.

Q. The question is: Who suggested the form of deed be changed, you or Mr. Parker or Mr. Stegmann, I say, Mr. Vawter Parker?

A. First I am wondering, is there a definite change in that final deed? What is the difference? I would like to know so I can answer intelligently.

Q. You do not know the difference between this and the others?

A. I said I did not analyze it; therefore, I am unable to say.

Q. All right, let us get the other one. Could I take that much time, your Honor?

(Testimony of Paul Winans.)

The Court: Isn't this the deed about which Mr. Vawter Parker testified?

Mr. Jaureguy: That is my understanding, yes.

Mr. Strayer: Yes, this is. In Mr. Vawter Parker's testimony, he said that he drew one form of deed with the name Blank Stegmann in the deed, and this is that deed.

Mr. Jaureguy: Well, of course, each of us remembers the [1848] part of the testimony that we think is important, and the part that I remember is in addition to that. This is a bargain and sale deed. This conveys—"have bargained and sold by these presents do grant, bargain, sell and convey unto the said Blank Stegmann, and unto his heirs and assigns the following described real property in the County of Hood River, State of Oregon."

This says, "have bargained and sold and by these presents does bargain, grant, sell and convey unto the said Chet L. Parker," and that was blank at the time, "and unto his heirs and assigns all right, title and interest in the following-described property in the County of Hood River."

Now, who suggested that change?

A. I think that came about jointly between Vawter Parker and myself. I don't know who raised the point. I imagine that I raised the point we were only selling our right, title and interest.

Mr. Jaureguy: Reserving the right to question him further when it comes my turn, I will not object.

(Testimony of Paul Winans.)

Cross-Examination  
(Continued)

Mr. Strayer: Right now I think we are through.

Mr. Buell: We have no further questions.

Mr. Jaureguy: Then I do not object to it going into evidence.

Mr. Ryan: May I see that? This is the first time I have seen it, your Honor. I have no objection. [1849]

The Court: It may be admitted.

(Document previously marked Plaintiff's Exhibit 94 for identification was received in evidence.)

Mr. Jaureguy: This ends with the description we read before, the rest of this form of deed?

The Witness: I don't know; it was not in my possession.

Mr. Jaureguy: Well, how did this get in the hands of Mr. Buell; do you know?

The Witness: No, I do not.

Mr. Lindsay: I gave it to Mr. Buell. Mr. Parker turned it over to me. You will notice his initials in the lower right-hand corner.

Mr. Jaureguy: So this was in your possession, was it?

Mr. Krause: No, it was in Mr. Vawter Parker's possession, he testified, and he gave it to Dennis Lindsay up in his office.

Mr. Lindsay: No——

(Testimony of Paul Winans.)

(Discussion off the record.)

Mr. Krause: At any rate, it was in Vawter Parker's possession until it was turned over to Dennis Lindsay.

### Cross-Examination

By Mr. Jaureguy:

Q. You do not know where the other sheet of it is? A. I beg your pardon? [1850]

Q. You do not know where the second sheet is?

A. No, I do not.

Q. Did you and Mr. Vawter Parker discuss together the appropriateness of having a warranty deed subject to the claims of the United States Government on the 40 acres?

A. Did we discuss it?

Q. Yes.

A. No, I stipulated first before the deed was to be drawn that we would not give a warranty deed.

Q. What reason did you give?

A. Well, simply on account of that question of title to the back forty.

Q. Didn't you tell Mr. Chet Parker that you would give a bargain and sale deed because that is the kind of a deed that came from Stegmann?

A. No, most certainly I never told Chet Parker anything like that.

Q. All right, then, you said you would give a bargain and sale deed? A. To whom?

Q. I say, who did you say it to?



(Testimony of Paul Winans.)

A. A bargain and sale deed?

Q. Yes.

A. Vawter Parker and Walter Stegmann.

Q. You told them you would give a bargain and sale deed? [1851]

A. Well, no, I won't say that. Now this particular discussion refreshes me about how that came about. That came about in the following way. I submitted this other paper that we had in evidence here a while ago that Stegmann was accepting this subject to the Government's claim, and when he refused to do that, Vawter Parker and I decided that it was only proper to specify the right, title and interest.

Q. Vawter Parker forgot about that when he testified, then? A. Did he?

Q. Evidently. A. Well, that is too bad.

Q. His testimony is not that. You heard Vawter Parker testify? A. Yes, I did.

Q. You heard him say that when Stegmann refused to sign that paper you asked him about it, and he said, "Inasmuch as we have changed the form of the deed, we do not need to have him sign it." Do you remember that?

A. Repeat that, please.

Q. Would you read the last question?

(Last question read.)

A. No, I do not remember that specifically.

Q. Did you discuss with Vawter Parker the ap-

(Testimony of Paul Winans.)

propriateness of having a warranty deed or a bargain and sale deed with respect to the small piece, tract one, and a quit claim deed with respect to the forty acres? [1852]

A. No, that was not discussed.

Q. That was not discussed? A. No.

Q. Was there anything at all discussed about the form of the deed to be prepared other than what you have already told us?

A. It certainly was at all times a deed which would not—which would be only our right, title and interest to the back forty.

The Court: That is not an answer to his question at all. Mr. Winans, I think it would be best if you just answer the question that is propounded to you by the attorney without telling what was in your mind or coming to your conclusions, and I think we will speed up the trial considerably.

The Witness: Thank you. I want to cooperate.

Q. (By Mr. Jaureguy): When did you employ your attorneys, your present attorneys?

A. Vawter Parker——

Q. No, no, these present attorneys?

A. Oh, these present attorneys?

Q. These esteemed gentlemen here.

A. On or about December 10th or 11th, I think, 1951.

Q. How long was it after you employed them that you told any of them that you had advised Chet Parker about this alleged defect? [1853]

A. At the same time that I employed them.

(Testimony of Paul Winans.)

Q. Same day that you employed them you told them that?

A. Well, I think I confirmed the employment a day or two later, but before—in the first conference I told them all the details.

Q. At the first conference did you discuss with them that you were under an obligation to notify Chet Parker?

A. To notify Chet Parker?

Q. Yes.

A. I do not think it was discussed.

Q. At all?

A. Not that I remember, not that I recall, rather.

Q. It might have been?

A. Oh, I think certainly there was no element of responsibility to notify Chet Parker.

Q. What was the reason for the long delay until December, until March, in filing this counterclaim and libel suit and conspiracy action?

The Court: I do not think that this witness is in a position to answer for Mr. Krause's professional competence or his lack of professional competence.

Mr. Jaureguy: Well, it is because the Court will take judicial notice of his professional competency that I think I have the right to question this witness about it.

The Court: Well, I recall at one of the pre-trial hearings [1854] you thought that his counterclaim was just ridiculous as a matter of law and said there was no basis for it.

Mr. Jaureguy: I still say so.

The Court: Well, then, it is a legal question and

(Testimony of Paul Winans.)

not a question that this witness would be in a position——

Mr. Jaureguy: Oh, well, it was not on that basis that I was asking him. It was not on that basis at all. I have a different theory entirely.

The Court: All right, go ahead.

Q. (By Mr. Jaureguy): Can you answer the question? A. Repeat it, please.

Q. If you had this long conference with him in December, do you know why it was that they did not file an appearance in this case until along the first of March?

A. That was entirely in the hands of the attorneys, and I could not give you any special reason.

Q. Isn't it a fact that it was not until quite some time after you employed them that you told them that you had told Chet Parker of this defect?

A. No, I told them this at the very start.

Q. You first saw Chet Parker, I think you said, on August 27th? A. Yes.

Q. 1951? A. Right.

Q. When did you have occasion after that date to try to [1855] recollect the type of clothes he had on on that day?

A. That is one of those things that just fixes, like you say, in your mind's eye, like a photograph, I know——

Q. You do not want to answer my question?

A. Pardon?

Q. You do not want to answer my question?

(Testimony of Paul Winans.)

A. Pardon me, I am sorry. Restate it and I will try to do it right.

Q. The question is: How long after that did you have occasion to try to recollect the kind of and color of clothes he had on on that day?

A. Oh, I think that I came back was probably when these rangers testified here in this court.

Q. And that reminded you? A. Pardon?

Q. That reminded you of the type of clothes he had on?

A. Well, it just brings back one of those things, you know.

Q. You say you were working on a map when he showed up there? A. Right.

Q. Where is that map? A. I have it.

Q. Where?

A. I think I have that in my brief case. I am not sure.

Q. Here? A. Yes. [1856]

Q. Could he look for it, your Honor? May I request him to go and look for it?

The Court: Oh, yes, go ahead.

Mr. Jaureguy: Will you get it, please?

The Witness: I will have to step down to do that.

The Court: Step down.

(Witness leaves witness stand and then returns to witness stand.)

The Witness: Now, this is a home-made affair, and that is, as a matter of fact, an enlargement off



(Testimony of Paul Winans.)

a Metsker map that I had, and the enlargement was made with pantograph steps. Here we have the first step off the Metsker map, second, third and fourth, in which I developed this larger picture of Lot 1.

(Pencil map marked Defendant Parker's Exhibit 129 for identification.)

Q. (By Mr. Jaureguy): Now, this folder you have here is labeled "maps." Are there some other maps besides Exhibit 129?

Mr. Krause: Wait a minute, are we going to dig into all the maps that he has there, your Honor? This exhibit was not brought in and marked in any way, and it is being brought in here at this late date, and now he is going to take up every other map we have got?

The Court: I appreciate that. However, there was a number of different documents introduced in evidence by the plaintiff in this case that had not been marked and had not been [1857] displayed to opposing counsel. At that time I indicated that Mr. Jaureguy and the other attorneys would have the same privilege as the attorneys for the plaintiff in submitting documents which had not been marked at the pre-trial conference.

This is a little different in view of the fact that it is a document in the possession of an adverse party which could have been discovered by the taking of a deposition prior to the time of the trial.

Mr. Krause: I do not object to this, to cut it short, perhaps, but I do not see why he is going to



(Testimony of Paul Winans.)

be inquiring into all the other maps that Mr. Winans has there. That was his last question.

The Court: Do they pertain to the case?

Mr. Jaureguy: When I find out that, I can answer his question. Yes, I am asking him what other maps are there in there.

The Witness: Oh, some very old ones. Here we have one of the land that was surveyed and set out by my father and myself way back in 1922 for the sale of home sites.

Here we have another blueprint of the same area on a different layout. Another I think that is similar to the first one.

Here is a sketch of my own of a possible layout back in those early days, 1922, and I think this is another copy—no, it is not, it is a little different, but it is more or less [1858] the same thing.

I think that perhaps one of these was the final plan which was certified to by the County Surveyor and registered engineer at that time.

The other one is simply with respect to the water filing made in the State Engineer's Office.

Q. There is a rectangular matter going cater-corner across the lower right-hand quarter, and then below that—well, I call south, it is to the left of that—what is this that is going, pointing up like a snake there? A. Inlet Creek.

Q. That is Inlet Creek?

A. That is right.

Q. What is this straight line that goes right

(Testimony of Paul Winans.)

straight across at the right end of this rectangular matter?

A. That is the section line between Sections 9 and 16.

Q. So I take it that the end of the arrow which almost touches that line, that is the meander corner?

A. That is the meander corner, yes, sir.

Q. That is what you were working on the day——

A. I was trying to work up a plan to go over with Stegmann, and it was interrupted by the arrival of Stegmann and Mr. Parker at that time. This is the map I referred to that I was working on. I had not gotten very far. I had not determined on any special plan. I believe I explained what I had in mind [1859] to Mr. Parker. He overlooked it. Stegmann did not take a hand.

Mr. Jaureguy: All right, we will offer this 129 in evidence.

The Court: Any objection?

Mr. Buell: No objection.

Mr. Krause: We have none.

The Court: It may be admitted.

(Pencil sketch previously marked Defendant Parker's Exhibit 129 for identification was received in evidence.)

Q. (By Mr. Jaureguy): Now, in this discussion you had, or argument, I don't know which you call it, that you say you had with Stegmann and Parker about going up and they said it was not necessary for you to go up?

(Testimony of Paul Winans.)

A. It was no argument; just a brush-off on their part.

Q. Just a brush-off on their part?

A. Just a brush-off on their part.

Q. And the brush-off caused you to say that you reserved the right to claim that——

A. I did.

Q. Prior to that time, I think you testified the other day when you were on the stand before, that you said that Mr. Stegmann had said that there was a surveyor, a friend of his who was a surveyor, and that you did not need to get these surveyors [1860] any more?

A. Well, he propositioned me on it, would it be all right if he would bring a friend of his who had done some surveying.

Q. Didn't he say it was not necessary to bring these other men, Mr. Bogar and Mr. Haynes; isn't that what you testified to?

A. I don't think he approached it that way. No, I pretty well recall his exact words.

Q. What were his exact words?

A. He said, "We are getting along so slowly here,"—pardon me, I am getting ahead of myself—these surveyors was tentatively planning to come back in one week more, the end of the following week, and as we walked out on the trail for the property, he said, "They are getting on so—these surveyors of yours are getting on so slowly I was wondering if it would be all right if I would bring

(Testimony of Paul Winans.)

up a friend of mine who has done some surveying to finish the job.”

Q. What he said, was that indicating that you were to bring on these surveyors in addition to his friends? A. No, he said a friend of his.

Q. Well, was it your understanding that the friend was to be in addition to your surveyors, or you were to bring your surveyors, also, and his friend, too?

A. No, his proposition was that he bring his friend to do the work, and I came back and said that if, subject to it being [1861] satisfactory with me, I guess that would be all right, subject to the work being satisfactory.

Q. That was when they were up there before?

A. Pardon?

Q. The conversation you have now related took place when Mr. Bogar and Mr. Haynes were up there before?

A. No, this is when Mr. Haynes and Mr. Kuns were surveying.

Q. I see. A. August 26th, Sunday.

Q. When did Mr. Haynes and Mr. Bogar survey? A. They surveyed on August 18th.

Q. Then it was the 26th when Haynes and Bogar—— A. Both 25th and 26th.

Q. Haynes and Bogar—what is that?

A. Both August 25th and 26th.

Q. Then it was the next day that Parker came up, the 27th?

(Testimony of Paul Winans.)

A. That was the date that I have, and it is accurate within a day or so. I have no notes or memoranda on it. I know he surprised me coming so quickly.

Q. This \$4,750 for the additional reserved area, you say that was computed after you had determined the acreage? A. Yes.

Q. When did you determine the acreage?

A. September 8, 1951.

Q. You have offered in evidence here, I think that is admitted, [1862] but you have identified a letter to the Bracker Timber Company?

A. Yes.

Q. That company deals in timber lands, does it not? A. Yes.

Q. Did you write to any stockmen's association or dealers? A. Pardon?

Q. Did you write to any dealer in livestock or a stockmen's association?

A. No, the nearest to that, I did write a letter to, or telephone, perhaps, the National Farm Loan Association at The Dalles.

Q. Where is that letter? A. Pardon?

Q. Where is that letter?

A. I said wrote or telephoned. I have not a letter.

Q. You have not got the letter?

A. No, I do not.

Q. You did not write to any real estate man that deals in farm lands in Portland?

A. No, I think not.



(Testimony of Paul Winans.)

Q. How did you happen to pick a timber man to write to?

A. Well, I had dealings with Mr. Bracker from time to time, and I think, if I recall right, I had him look up some references at some previous time on something else, so I naturally reverted to Mr. Bracker. [1863]

Q. You say you were not asked by anybody to furnish—there was no discussion between you and either Stegmann or Chet Parker about furnishing either an abstract or title insurance?

A. Most certainly, it was never asked or requested by either of them at any time.

Q. You did not volunteer to furnish anything?

A. Pardon?

Q. You did not volunteer?

A. I expected to turn over, at least to submit this title insurance policy that I had.

The Court: Just answer Mr. Jaureguy's question, will you, please?

The Witness: Again, please?

Q. (By Mr. Jaureguy): You did not volunteer to furnish either an abstract or title insurance?

A. No.

Q. You expected to turn over your title insurance policy, you say?

A. At least to submit it to them.

Q. Why didn't you?

A. I couldn't find it at the time.

Q. Oh, you could not find it? When did you look for it?

A. Pardon?



(Testimony of Paul Winans.)

Q. When did you look for it?

A. Oh, several times. I finally located it. [1864]

Q. One time was on August 18th?

A. No, I didn't look for it on that date.

Q. One of them was on August 11th?

A. Pardon?

Q. One of them was on August 11th?

A. August 11th, I imagine that I did.

Q. On August 18th you say you did not look for it at that time? A. No, I did not.

Q. How are you able to remember that?

A. Because there was no time, hurry, I would have no time to do that. I was pressed to get out this acknowledgment, this notification of Election to Purchase and acknowledgment. That is all I had time to do.

Q. But you say on that day you did not talk to Chet Parker? A. Absolutely not.

Q. And discuss the question of your title?

A. Not with anyone at that time any more than Stegmann knew all about it at that time.

Q. And you did not look for your policy?

A. No, not on that date at all.

Q. You say Title and Trust Company never interviewed you before the institution of the suit?

A. Not at all.

Q. Do you know whether they interviewed your attorney, Vawter [1865] Parker?

A. He never mentioned it; therefore, I say they did not.

(Testimony of Paul Winans.)

Q. Had you heard before the institution of the suit that the Title and Trust Company was investigating the possibility of conspiracy and collusion between you and Chet Parker?

A. No, I heard nothing like that.

Q. You heard nothing like that. That part did not injure your reputation?

A. Pardon? Well, it did when it came out. It might have injured my reputation unknown to myself; I will say that.

Q. On paragraph five of the complaint, the last complaint you filed, page twelve, you say, "During the month of July, 1951, and subsequent thereto, the defendants Chet L. Parker and Lois M. Parker and Walter Stegmann entered into and engaged in a conspiracy to defraud the plaintiff." The plaintiff is Title and Trust Company. A. Yes.

Q. What is your understanding of what these defendants did to defraud the Title and Trust Company? A. That reverts back to the——

Mr. Krause: Just a moment. I want to make my objection to that. Of course, I drew that complaint, or Mr. Lindsay did, one of us, and the evidence is all in here now of conspiracy, and I do not know whether we want Mr. Winans to review all of it for the Court, but that is what it would involve, and the [1866] evidence was brought in by all of the witnesses. Either it presents a conspiracy or it does not. Now, for Mr. Winans to review it does not seem to me that is proper cross-examination of the witness, anyhow.

(Testimony of Paul Winans.)

The Court: If he had signed the answer, which he did not do in this court, a file may be used for purposes of impeachment. I do not see what useful purpose is going to be served to go into the meaning of those words and why they were in the complaint, in his cross-complaint. How long will it take you if you go into it?

Mr. Jaureguy: I would not want to prophesy, your Honor.

The Court: I am going to sustain the objection.

Mr. Jaureguy: I wonder if I may have the record show that a similar allegation was made in the original cross-complaint that they filed in 1952?

The Court: Yes.

Mr. Krause: If that is true, I would agree with you.

Mr. Jaureguy: Well, I will prove it to you.

Mr. Krause: I am taking your word for it.

Mr. Jaureguy: I will certainly apologize if it is not in there.

That will be all.

The Court: Mr. Ryan?

### Cross-Examination

By Mr. Ryan:

Q. On August 11th, Mr. Winans, what time of the day on [1867] August 11th did you prepare the option that was——

A. I think it was finished on or about perhaps through the noon hour.

Q. I see. Now, at the time of this conversation

(Testimony of Paul Winans.)

between yourself and your sister, Ethel, in which you say that Mr. Stegmann was present, that took place at the family house there.

A. That is right.

Q. At that time, had the option been prepared?

A. No, not completed. I had been working on it, I think.

Q. Did you show your sister, Ethel, a draft of it, or a portion of it, or was that in the conversation?

A. I don't recall clearly. It is quite possible that I carried over an uncompleted draft of it.

Q. Is it your testimony that at that time it was understood between you and Mr. Stegmann that he was to have both Lots 1 and 2? A. Yes.

Q. At the conclusion of this conversation, you then had lunch with Mr. Stegmann?

A. No, I think we completed the option first and then lunch.

Q. When did you have your sister, Ethel, sign the option?

A. Immediately that it was finished.

Q. That was sometime in the afternoon of the 11th?

A. Well, I think it was possibly through the noon hour. [1868]

Q. Was Mr. Stegmann present then?

A. No, he remained at the service station while I carried it over for her signature.

Q. Did your sister, Ethel, question you regarding the fact that there was not a division of the value on these lots stated in the option?

(Testimony of Paul Winans.)

A. No, that had been set out at what it might be before that time, had been discussed.

Q. What it might be?

A. That it might take that form. You see, this was tentative until Stegmann returned and also subject to my confirmation, but that whole fact had been submitted to my sister.

Q. You mean that you, at the time of the actual agreement, what you finally decided to sell, was the entire two lots as one unit for a hundred thousand dollars?

A. Yes.

Q. And that is the way you embodied it in the option?

A. Yes.

Q. Then the tentative agreement did not bind you, but the option did; is that right?

A. That is correct.

Q. You were not concerned to tell Mr. Stegmann about the claim of the Government; is that correct?

A. To tell him about it?

Q. Yes. [1869]

A. Oh, yes, that had started, oh, weeks before. I told him all about it.

The Court: I do not understand. You asked if he was concerned to tell him?

Mr. Ryan: Yes.

The Court: I do not understand what that means.

Mr. Ryan: He has testified here that he did tell him.

The Court: Yes.



(Testimony of Paul Winans.)

Mr. Ryan: And he took pains to inform him of the existence of this problem.

The Court: Is that what you mean about "concern"?

Mr. Ryan: Yes, your Honor.

The Court: Did you so understand it, Mr. Winans?

The Witness: That it was a matter of concern?

The Court: Yes, that you took pains to notify Mr. Stegmann?

The Witness: Oh, very definitely.

The Court: All right, proceed.

The Witness: I could not have leaned over backwards farther in my explanations.

The Court: Go ahead.

Q. (By Mr. Ryan): Was there any discussion at the time you drew the option regarding a statement in the option of your position with regard to the Government claim of ownership?

A. I think it was probably stated, but, at any rate, if I [1870] were not to set it out that way, there would have been no deal.

Q. Was there a discussion; that is my question.

A. I do not think a discussion, a flat statement on my part, probably.

Q. What was your flat statement?

A. Well, this option was simply drawn up on the basis of a meeting of the minds between us, and the meeting of the minds was my proposition without any comeback from Stegmann about it. He took it the way I set it out.



(Testimony of Paul Winans.)

Q. My question was: Was there any discussion about putting in the option a statement of this problem regarding the title?

A. Further than I did, no. It is in the option, I maintain.

Q. It is in the option?

A. The plain language of the option is a notice to anyone that——

The Court: We are not going to get into any legal discussion.

The Witness: Pardon me. I am sorry.

Mr. Ryan: I am not going to go into that, but I wanted to know, to have him explain what he means by "it is in the option."

The Court: He explained that in his testimony several weeks ago.

Q. (By Mr. Ryan): You felt that that was a sufficient preservation of any right of yours which might be endangered by your [1871] failure to give a full statement of the, what the intention of your deal was?      A. Is that yes or no?

The Court: You do not have to answer it yes or no.

Mr. Ryan: No, I am not asking——

The Witness: Repeat the question, please.

(Last question read.)

A. In view of the full explanation that I had submitted to Mr. Stegmann time and again, I figured that it was sufficient.

(Testimony of Paul Winans.)

Q. When did this call to the Forest Rangers take place?

A. I think that that exact date could be determined, but, as I recall it roughly, it must have occurred—I am very sure that it occurred before the date of August 1st, probably considerably a few days before that, anyway.

Q. Was that before or after you had decided to let Mr. Stegmann have Lots 1 and 2?

A. Oh, yes, that did not—didn't definitely come up until August 11th. On August 1st we set up the tentative agreement, and certainly they called the Forest Service prior to that.

Q. On September 8th you were not present during the entire course of the day with Mr. Stegmann and Mr. Haynes on September 8th, were you, Mr. Winans? A. There was a break in that.

Q. When did you absent yourself or leave them?

A. I didn't quite get your question. [1872]

Q. When did you leave them; approximately what time did you leave them on that day?

A. I imagine I left on, early in the afternoon, perhaps by two o'clock, and returned within an hour.

Q. That was your only absence from them, then?

A. That was the only absence.

Q. On August 27th, I believe you said Mr. Chet L. Parker came to your place with Mr. Stegmann?

A. He did.

Q. That was when this question over the map, he looked at the map? A. That is right.

(Testimony of Paul Winans.)

Q. And betrayed a professional interest in it?

A. Right.

Q. He was not introduced at that time?

A. Pardon?

Q. He was not introduced at that time?

A. Oh, yes, he was.

Q. Was he introduced?           A. Yes, sir.

Q. Was he given a name, Chet Parker; you knew him as Chet Parker at that time?

A. Pardon?

Q. Was he given a name, Chet Parker; you knew him as Chet Parker at that time? [1873]

A. After the introduction.

Q. Did you have in your possession at that time on August 27th the letter of—referring to the bank in Hood River, to Chet L. Parker as a reference for the financial reliability of Mr. Stegmann?

A. No.

Q. When did you first obtain that?

A. I didn't obtain it.

Q. Did you know about that at any time?

A. I did.

Q. When?

A. When Mr. Bergland showed it to me in the bank.

Q. When was that?

A. May I be referred to the date in that letter?

Q. Yes.           A. What is the date?

Q. I do not know.

Mr. Jaureguy: August 15, 1951.

(Testimony of Paul Winans.)

Mr. Lindsay: It shows receipt from the bank on August 16th, on the 15th or 16th, as I remember.

The Witness: Yes, I probably saw it just about that date.

Q. (By Mr. Ryan): Did you make any connection between the party introduced to you as Chet Parker and the person who had given a statement regarding the reliability of Mr. Stegmann?

A. Yes, I noted it. [1874]

Q. You noted it? A. Yes, I noted it, yes.

Q. Did you ask any questions of him?

A. No, I made no comment.

Q. Was that on the basis of your belief that he was a different person?

A. A different person?

Q. Than the Chet L. Parker that had given you the reference?

A. No, I didn't. It was perhaps a little in the nature of a surprise, but I said nothing about it.

Q. At that time did you cease to have further concern regarding the financial reliability of Mr. Stegmann?

A. Not particularly. By that time he paid \$5,000. Checks had gone through.

Q. So you did not ask Mr. Chet L. Parker anything about the letter? A. No, I didn't.

Q. Or mention it to him or go into the matter at all? A. I did not.

Q. But you did connect the name, Chet L. Parker, with the person——

A. Yes, I did, instantly.

(Testimony of Paul Winans.)

Q. Isn't it true, Mr. Winans, that Mr. Stegmann paced out an approximate area for the purpose of ascertaining how much ground could be given in the additional reservation which you [1875] were seeking?

A. No, he did not.

Q. Who did that?

A. No one.

Q. You mean there was nothing done on the Lost Lake area regarding that additional reserved land?

A. No.

Q. Was that done solely on the maps?

A. On the maps only.

Q. Was there any discussion up there on the Lost Lake area with regard to what portion of that area would be given to you as an additional reservation?

A. I think there was, that I opened the matter there with Stegmann on the date of August 30th by asking him if I wanted to retain enough land to include Inlet Creek to the west line of Lot 1, if I could negotiate for it.

Q. What did he say?

A. I think he intimated it would probably be agreeable.

Q. So there was some understanding as to what portion——

A. It was not an understanding; it was just simply a question and he did not deny it. He did not refuse.

Q. You say August 30th? I am assuming that you mean the day that you went up there on the survey trip?

A. I do.

(Testimony of Paul Winans.)

Q. Was that the day Mr. Chet L. Parker was there and Myron [1876] Parker? A. Yes.

Q. You are not certain whether that is the 30th or the 31st? A. Well, I made no notes.

Q. Was Mr. Chet L. Parker present when this conversation took place? A. He was.

Q. Did he say anything to contribute to it?

A. Not a word.

Q. In his capacity of surveyor, did he ask you any questions referring to it?

A. I don't recall any.

Q. Was a valuation discussed at that time?

A. No.

Q. With regard to the additional area?

A. No.

Q. That exclusively took place in Vawter Parker's office? A. Yes, in Vawter Parker's office.

Q. Up on the lake property there on August 30th or 31st, did you have any conversation with Mr. Chet Parker directly?

A. In company with other persons, yes.

Q. Do you remember specifically a discussion regarding income tax?

A. Well, that was after we were off the property, or as we left the property that began. [1877]

Q. I see; and what did that relate to, the sale of this property, or just generally the problem of income tax?

A. No, Stegmann opened that up, informing me or trying to inform me there that we could—I think that prior to that Stegmann had propositioned me



(Testimony of Paul Winans.)

himself that we did not need to take all the money in the year 1951, that if we wanted to carry over and take half of it in 1952, it would save us on income tax, and he opened this discussion with the apparent purpose of inducing me to take all of the money in 1951.

Q. All of it in 1951? A. Yes.

Q. Then did Mr. Chet L. Parker discuss that?

A. Oh, he came into the discussion shortly, yes.

Q. In whose car did you go up to the lake property on the day we are discussing now?

A. Pardon?

Q. In whose car did you go up to the lake property on the day we are discussing now?

A. Stegmann's Mercury.

Q. On August 18th you drew the Election to Purchase and the permission for the extension of time after you came back down from the lake?

A. Yes, the acknowledgment of Notice of Election contains that provision for extension.

Q. You are familiar with that, are you [1878] not?

A. Yes, I saw it here again this morning.

Q. You signed that, and Ethel Winans signed that? A. Yes.

Q. Did Ethel come down to the office, or how did she sign it?

A. I think I took it over to her.

Q. Then what did you do? Did you come on back down to see Mr. Stegmann? A. Yes.

(Testimony of Paul Winans.)

Q. Was it before or after that that Mr. Stegmann signed, according to your recollection, the yellow copy of that document?

A. It would be a little hard to say, but the natural course would be to sign it when I got back with it.

Q. Were Mr. Bogar and Mr. Haynes out there at the time you went up to see Ethel?

A. Oh, yes.

Q. Your recollection is that your mention of the policy of title insurance was confined to the evening of the 11th when you attempted to find it, or what time did you mention?

A. When did I mention it?

Q. Yes.

A. I am quite sure that I made a casual search for it on August 18th—pardon me, I want to correct to August 11th. That is just a slip of the tongue.

The Court: All right, go ahead. [1879]

Q. (By Mr. Ryan): Is that the same as your recollection at the time you took your deposition?

A. Pardon?

Q. Is that the same as your recollection at the time you took your deposition?

A. I believe so.

The Court: Do you want to impeach him on the statement?

Mr. Ryan: I have this marked, your Honor, and I misplaced my mark.

The Court: Tell him the number of the page.

(Testimony of Paul Winans.)

Well, Mr. Winans will be here this afternoon. During the noon hour you can check it. Have you any more questions as far as Mr. Winans is concerned?

Mr. Ryan: No, I have no more questions.

The Court: Any further questions of Mr. Winans?

That is all, Mr. Winans.

(Witness excused.)

The Court: We will recess until 1:30.

(Noon recess taken.) [1880]

Afternoon Session—1:30 P.M.

PAUL WINANS

recalled, testified as follows:

Cross-Examination

(Continued)

By Mr. Ryan:

Q. Mr. Winans, would you turn to your deposition there, page 135? A. 135, I have it.

Q. The question beginning at the top of the page: “Q. Did you ever show him,” meaning that is Stegmann, “the policy of title insurance you had on the place? A. No, I never did.

“Q. Did you look for it while you were preparing the option? A. No.

“Q. Where did you obtain the description of the property?

(Testimony of Paul Winans.)

“A. I knew the description so well I didn’t have to refer to anything.”

Do you recall giving that testimony at the time of your deposition?

A. Yes, I take it this was the correct testimony.

Q. Is it now your testimony that you did look for your title insurance policy at the time you were preparing the option?

A. That is as I recall it. [1881]

Q. As you recall it now. At the time of your deposition you did not think that you did look for it.

A. Let me read that carefully, will you?

Q. Surely.

(Witness consults exhibit.)

A. I got to get fixed in my mind what I did say. Well, I think it is not absolutely inconsistent.

Q. Well, my question is this: Is it now your recollection that you did search for your title insurance policy at the time you were drawing the option?

A. Yes.

Q. You have heard Mr. Stegmann’s testimony regarding the fact that, as he recalled it, you searched for it in some papers and you could not find it on the night of the 11th or the day of the 11th.

A. However, the reason he gave would have some bearing on my answer.

Q. Now, all I am asking you now is did you search for it?

A. Yes, I believe I did, casually.

(Testimony of Paul Winans.)

Q. Did you inform Mr. Stegmann that you were searching for it?

A. Did I inform Mr. Stegmann I was searching for it?

Q. Did you inform Mr. Stegmann that you were searching for it?

A. As I recall it, he was there and saw me search for it, casually, I say. I made no very far-reaching search for it.

Q. Does this refresh your memory to any extent just with regard [1882] to whether or not you used the tax receipts to write out the description?

A. No, I did not.

Q. In other words, you made the description from memory?

A. Yes, absolutely.

Mr. Ryan: That is all the questions I have.

The Court: Any further questions?

Mr. Krause: We have nothing further. That is all, Mr. Winans.

The Court: That is all.

(Witness excused.)

Mr. Krause: If the Court please, now with respect to these attorneys' fees, I would like to ask counsel whether they are prepared to stipulate as we have in the others, if as a part of our damages we are entitled to recover the costs of this case, that the Court may fix reasonable attorneys' fees based upon a statement that we will make as all the other attorneys will that are claiming attorneys' fees of the extent of the services rendered.

The Court: We will start in with Mr. Jaureguy. Are you willing to so stipulate?

Mr. Jaureguy: Yes, I will stipulate.

Mr. Strayer: I would like to make it understood, Mr. Krause, we are willing to stipulate that insofar as a reasonable amount is concerned, the Court can fix that the same as anything [1883] else, but I am still concerned about the problem your Honor raised this morning whether there would be an obligation to pay that amount.

The Court: Yes, but the witness testified now that he agreed to pay reasonable attorneys' fees.

Mr. Krause: No agreement as to the amount at all.

Mr. Strayer: I think that is right.

The Court: How about you, Mr. Ryan?

Mr. Ryan: May it please the Court, I would like to have the opportunity to reopen my case in chief for that purpose. I agree that there should be some evidence of——

The Court: You would like to reopen your case in chief?

(Discussion off the record.)

Mr. Ryan: Yes, I will enter into the stipulation Mr. Krause has prepared, yes.

The Court: All right, so stipulated, then, that in the event that the Court decides that as a part of the damages to which Mr. Winans is entitled, or the Winans are entitled, if I find that they are entitled to any, then as to the amount of such attorneys' fees, I can fix it on a basis of a statement of



Mr. Krause and Mr. Lindsay, if necessary, as to the amount of work which they performed. [1884]

\* \* \*

JAMES K. BUELL

called as a witness in behalf of the Third-Party Defendants, having been first duly sworn, was examined and testified as follows:

The Court: Can we stipulate that Mr. Buell is an attorney licensed to practice in the State of Oregon?

Mr. Jaureguy: Yes.

Mr. Ryan: Yes.

Mr. Krause: Yes.

Direct Examination

By Mr. Krause:

Q. Will you state your name, please?

A. James K. Buell.

Q. You are an attorney licensed to practice in Oregon? A. Yes.

Q. How long have you been in practice, Mr. Buell? A. Since November, 1946.

Q. You are a member of the firm of Phillips—

A. Coughlin, Buell & Phillips.

Q. You are the attorneys for the Title and Trust Company, or one of the firms for the Title and Trust Company in this case?

A. That is right.

Q. You were the attorney that originally filed the original complaint in this particular action here?

(Testimony of James K. Buell.)

A. I prepared and filed the original complaint.

Q. Mr. Buell, do you recall the approximate date when you [1887] were consulted by the Title and Trust Company regarding this case?

A. It was about one or two days prior to the first conference that I had with the Marsh brothers and Mr. Dashney, together with Mr. Alstadt.

Q. Do you know about when that was?

A. That would be about September 23 or September 24.

Q. When was the first time that you met Chet Parker?

A. That was September 27, 1951, I believe.

Q. Where did you meet him?

A. In the office—or the offices of Marsh & Marsh and Dashney in McMinnville.

Q. Besides yourself and Mr. Parker, who else was present?

A. Why, Mr. Alstadt and Mr. William Dashney.

Q. Did you inquire of Mr. Parker at that time as to the number of times and the occasions when he had met any of the Winans, and particularly Paul Winans?

A. I asked him what—I asked him when he saw Winans and what Mr. Winans had said to him in connection with the purchase of the Lost Lake property.

Q. By the way, before we go on with that, what, if anything, had Mr. Parker told you about who had purchased that property?

(Testimony of James K. Buell.)

A. He told us that he had purchased the property.

Q. That he had purchased it. Did he say that he purchased it direct from Winans or from some other party? [1888]

A. Well, he told us that he had purchased an option on the property from Walter Stegmann and had paid \$25,000 for it.

Q. How many times did Mr. Parker say that he had met Paul Winans?

A. He said that he had met him once.

Q. Did he give you the date or the occasion when he had met him?

A. He didn't give us the date, but he gave us the occasion as being on a survey party on the property surveying out the line between the north and south parts of the Government Lot 1.

Q. Did he say who was doing the surveying, Mr. Buell?

A. He said that he had gone up on the property with Stegmann as a surveyor from Portland.

Q. What, if anything, did Mr. Parker say regarding any—well, first of all, his knowledge of any defect in the title to the forty acres?

A. Well, he told us that he did not know anything about any defect in the title until after the deed had been received and recorded.

Q. Did he say whether any representations had been made either to him or in his presence regarding the state of the title to the forty acres?

A. Representations by whom?

(Testimony of James K. Buell.)

Q. Well, by the sellers or anybody acting for them?

A. He did not tell us that any particular representations had [1889] been made to him in the course of his one contact with Mr. Winans. If I can explain that a little further, I think I can clarify it.

Q. I wish you would.

A. When I had gone down there, it was two days following the date of the conference with the two Marsh brothers and Mr. Dashney, and at that time I, together with the partners in the firm, had concluded that the prospects of attempting to perfect the title were fruitless, that there was not much chance of obtaining any relief in pursuing that tack, and that the best opportunity or the best chance to come out of the transaction with a, with no loss or a minimum of loss would be to rescind the entire purchase, and so by the time we had made our appointment and met with Mr. Parker and Mr. Dashney, I had outlined in my own mind the type of suit that I thought should be brought, and in the case of this first meeting with Mr. Parker, we had finally reached a tentative agreement to settle the claim against the title company and proceed with the rescission suit, I was questioning him with regard to his knowledge of the sale and the purchase to see if there were any direct representations that had been made by Winans to Parker pertaining to the title because I had relied, was relying primarily on the option itself, which I considered

(Testimony of James K. Buell.)

to be a representation of marketable title, but I was somewhat concerned as to whether or not the representation, such as it may be in the option, as to whether [1890] that would run from Stegmann to Parker in the case of the purchase of the option by Mr. Parker, so I particularly questioned him about just exactly what Mr. Winans had had to say about the property on the occasion that they were up on the lake. It was in the course of that questioning that he stated that he did not have an opportunity to talk very much with Mr. Winans and that there was no discussion between them as to the title on that one occasion that he had met him.

Mr. Krause: I think you may cross-examine.

### Cross-Examination

By Mr. Jaureguy:

Q. What you have been testifying to with respect to discussions or conferences in your testimony here on direct, that all took place the first time you met Chet Parker?           A. Yes.

Q. Who did you say were present at that conference?

A. Mr. Dashney, Mr. Parker, Mr. Alstadt and myself.

Q. What about the Marsh brothers?

A. No, they were not present.

Q. Isn't it a fact that Frank Marsh was there at that meeting?

A. No, Frank and Gene were on a hunting trip



(Testimony of James K. Buell.)

at that time, and that was the reason that Mr. Dashney was representing Mr. Parker. Mr. Dashney had been called into the first meeting that I had had with the two Marsh brothers for the purpose of being familiarized with the background of the transaction so [1891] that as soon as Mr. Parker got in touch with the office, Mr. Dashney could handle the deal and we could start the rescission suit as soon as possible.

Q. Well, now, do you know whether there had been any previous meetings that you had not attended?

A. Between representatives of the title company and the Parkers?

Q. Yes.

A. Well, I have learned through the title company that there had been one.

Q. So that there had been one meeting there in McMinnville that you understood that Mr. Dwyer was there and Mr. Alstadt and one of the Marsh brothers?

A. Yes.

Q. Then had you attended the second meeting with the attorneys?

A. The second meeting that you refer to was the first meeting that I had anything to do with the transaction.

Q. Who was present at that meeting?

A. That was—it started out a meeting between Mr. Alstadt and myself and Francis and Gene Marsh. Then after about an hour of conference, Mr. Dashney was called in.



(Testimony of James K. Buell.)

Q. Well, at that meeting was there any reference to this statement that you say—oh, you had not met Parker yet? A. No, I had not.

Q. Did you discuss with them how this transaction was handled? [1892]

A. You mean the details of exercising the option and the closing?

Q. Anything about the transaction, how the purchase was handled.

A. There was a general discussion which was just to the effect that Mr. Parker had purchased an option on the property from Mr. Stegmann, and we were shown the photostat or, no, no photostatic copy, we were shown Mr. Parker's signed copies of the option and the notice of Election to Purchase; that is, the original copies which did not bear the signature of Mr. Stegmann on them but did bear the signature of Paul and Ethel Winans.

Q. Well, your company had those before, did it not? A. No.

Q. Or copies of them?

A. No, on the first meeting, which was on September 25th, we were shown the copies and made arrangements that evening to have photostatic copies made, which were then mailed up to us within a day or two following by the Marsh brothers.

Q. At that time was there any discussion other than you have related as to how this transaction was handled? That is to say, whether or not it was discovered that Parker purchased the option and

(Testimony of James K. Buell.)

that thereafter he handled any negotiations or whether he kept out of the picture?

A. I don't think there was.

Q. You do not think there was. At the third meeting when [1893] Dashney was present and the rest of them, how did the question happen to come up as to whether, how many times he had met Winans?

A. It came up, as I stated, in the course of my explaining to Mr. Parker that the basis of a rescission suit against the Winans family to rescind the whole transaction on the ground that they had reported that they had a marketable title to the forty-acre tract when, in fact, they did not, and we explained that we had conclusive evidence that they knew that they did not have marketable title by virtue of this prior claim against Pacific Abstract & Title Company.

Q. Now, did you have another meeting when Chet Parker was present? A. Yes.

Q. That was about two weeks later, was it not?

A. It was on October 11th or 12th, Friday.

Q. The one you have testified to, you say, was on September 27th? A. Yes.

Q. In between those two meetings, you made quite an intensive investigation of Parker and Winans and how this deal went through, did you not?

A. No, the only—we made some private—or attempted to make a private investigation of Mr.

(Testimony of James K. Buell.)

Stegmann and made—or had made a number of inquiries about Mr. Parker.

Q. At that time you were under the suspicion that Parker had [1894] conspired with Winans, were you not?      A. No, not whatsoever.

Q. Do you know who it was, the representative of the Title and Trust Company, that interviewed Mr. Wortman at the First National Bank of McMinnville?      A. I believe it was Mr. Mears.

Q. And the purpose of your interviewing Mr. Wortman was to investigate your suspicion that there was a conspiracy between Winans and Parker; isn't that correct?

A. No, it was to investigate the previous relationship, if there was any, between Mr. Parker and Mr. Stegmann.

Q. At the next meeting that you met Mr. Parker, which was two weeks after the first one that you have testified to, didn't Mr. and Mrs. Parker—didn't they both express themselves as being surprised and hurt because of representations by somebody representing Title and Trust to Mr. Wortman that there was a conspiracy between them and Winans?

A. They expressed, I don't know whether you call it surprise and hurt or angry, but they expressed the fact that they stated they did not like the fact that inquiries had been made about them at the bank, and they insinuated that the inquiries had been made, together with derogatory statements, and we assured them at that time that we

(Testimony of James K. Buell.)

had not made or intended to make any derogatory statements about them and that we were sure that Mr. Mears had not. At that time, why, I had not talked with Mr. [1895] Mears or didn't know that he had, in fact, been into the bank, I don't believe.

Q. Didn't they, in connection with that, say that the statements that had been made to Wortman was that the Title and Trust Company thought they were conspiring, that they had been conspiring with Winans to put over this deal?

A. I don't think so.

Q. Did you, during that two-week interval, interview a Kenneth Abraham of Hood River?

A. No.

Q. Who did, do you know, representing the Title and Trust Company, if anybody?

A. I think Mr. Miller at Hood River had talked very briefly with Mr. Abraham.

Q. Did you thereafter interview Mr. Abraham?

A. Yes.

Q. When was that?

A. That was in the latter part of October.

Q. Latter part of October, and at that time did you state to Mr. Abraham that the Title and Trust Company were suspicious that there was a conspiracy between Winans and Parker?

A. Would you repeat that?

(Last question read.)

A. No, we did not make a statement to that effect.

(Testimony of James K. Buell.)

I would like to go on further to state that I believe we [1896] did tell Mr. Abraham that we were suspicious that a full disclosure had not been made to us because of the fact we could not understand why Mr. Parker would not accept the \$110,000 settlement that we had offered and permit us to go ahead with the suit for rescission against the Winans family.

Q. Was Parker's option, as you understood it, through the Winans family or through Stegmann or just——

A. Well, going back to the first meeting that I had with Mr. Parker on September 27th, Mr. Parker on that day stated that he, it didn't care so much to him as to whether he sued Winans in his name or not, but that he couldn't see any reason or any way in which Mr. Stegmann could be brought into it, and he advised us that it seemed to him that Mr. Stegmann had an option to sell, and he bought it, and that is all there was to it. I explained to him that insofar as Stegmann was concerned that a suit would not be as strong as against the Winans but that it would be based on mutual mistake.

Q. Was that not largely a discussion among the attorneys and that Dashney explained that he and the Marsh brothers thought that you did not have any case against Stegmann, but you did have a case against Winans?

A. I think Mr. Dashney may have—he may have made such a comment or have joined in the discus-



(Testimony of James K. Buell.)

sion with such a comment also, but I am quite sure that Mr. Parker made the same affirmative assertion himself, that he didn't see how there [1897] could be any suit against Stegmann.

Q. What I would like to know was whether or not Parker was making that as of something which he had thought up himself or whether he was making it as something that his attorneys had told him?

A. Well, I couldn't answer that.

Q. At any of these—at either of these two meetings that you attended, did Mr. Parker make a statement substantially to the effect that he did not think that the Winans would sell him this property if they did not own it; that he had met Miss Winans and he was rather certain that she would not do that?

A. Did you say if he didn't think that he owned it——

Q. That the Winans would not sell him this property if they did not think that they owned it; that he had met Miss Winans and he was rather certain she would not do a thing like that?

A. Well, I don't recall his making any such statement in words of the general terms that you used. There was a considerable discussion by Parker and myself and Mr. Alstadt and Mr. Dashney and surprise that such a sale could have been made in view of the prior history of the loss against Pacific Abstract & Title Company.

By the time of my first meeting with Mr. Parker,



(Testimony of James K. Buell.)

we had obtained that file and had seen that Mr. Winans and Miss Winans knew all of the details about the defect in the title. [1898]

Q. Yes, that is what you knew, yes, and I am speaking whether or not Parker did not make some comment to the effect that I have just stated?

A. That they would not have attempted to sell it unless they thought they had good title?

Q. That is correct, something of that kind.

A. There might have been some comment made along that line.

Q. Did you ever show Mr. Parker the file?

A. Yes.

Q. The Winans file?            A. Yes.

Q. What was the occasion of showing him that file?

A. The occasion of showing it to him of which I am positive was at the meeting on about October 11th in my office.

Q. Yes?

A. I do not think that we had the file with us at the meeting with Mr. Dashney on September 27th. I think it was in the process of being photostated at that time, and we told Mr. Parker of the letters that were in the file, and Mr. Dashney told Mr. Parker at that time that he had seen the file when we had been down the preceding Tuesday.

Q. All right, then, at that time did Parker seem surprised?            A. Surprised——

Q. Surprised to learn that the Winans knew about this defect when they sold the property?

(Testimony of James K. Buell.)

A. He expressed some surprise. [1899]

Q. All right, then, on October 12th, or that meeting thereabouts, that was in your office, was it not?

A. Yes.

Q. What did you show him—was Mrs. Parker there? A. Yes.

Q. Did you show them both that file then?

A. You mean as in a sense of taking it and for us showing it to the one and then the other? I do not believe so. Mr. and Mrs. Parker were sitting next to each other right next to Francis Marsh, and we showed it to them generally.

Q. Did they seem surprised when they saw the letter from Miss Winans to the title company that was in the file?

A. Well, there was—we all, as I said, went through the same discussion that we could not conceive how anybody would attempt to sell a piece of property for that amount of money in view of their knowledge of the circumstances without making a disclosure of their knowledge.

Q. Yes.

A. And Mr. Parker had told us that he did not know anything about the state of the title.

Q. Well, now, to get back to the question, did Mr. and Mrs. Parker express surprise when they read the letter from Miss Winans to the title company that is in evidence in this case?

A. Well, as I say, they did.

Q. They did. I do not think that you said it before. It was, [1900] therefore, after you had had

(Testimony of James K. Buell.)

these conferences, these four conferences, and after you had investigated Mr. Winans by going, having somebody go down to the bank and you going to Hood River——

A. We had not investigated Mr. Winans.

The Court: Are you referring to Mr. Parker, Mr. Jaureguy?

Mr. Jaureguy: I meant Mr. Parker. I apologize to everybody for making that mistake.

Q. It was after you had investigated Parker through the bank at McMinnville, through his former attorney, Kenneth Abraham, in Hood River, that you prepared the complaint in this case?

A. Well, that leaves out a large number of important circumstances that led up to the filing of the complaint, but the complaint did follow some of the events that you outlined.

Q. Are there any events that I outlined that the complaint did not follow?

A. Well, I think——

Q. Well, you said——

A. I do not think I understand the question there.

Q. You said that the inquiries of the McMinnville bank were between your first and second meetings with Parker. You said that your conference with Kenneth Abraham was the last of October?

A. Yes.

Q. The record shows the complaint was filed on November 27th. [1901]

A. Yes.

(Testimony of James K. Buell.)

Q. How long before you filed it did you prepare it?

A. Well, I think that—if I recall, it was filed within one or two days of the time it was in final form.

Q. Yes, so there was nothing—then I will ask you this: In the interim, what other investigations did you make about this transaction?

The Court: Go ahead and tell him. That is what Mr. Buell has been complaining about all the time in your questioning. He has not been permitted to tell what facts intervened.

Mr. Jaureguy: I certainly asked the question now that gives him the opportunity to tell it all.

The Court: Go ahead.

The Witness: First we had not made an investigation of Mr. Parker in the sense of any detailed examination into his background or anything like that. We had made one or two inquiries as to what people in the McMinnville area knew of any previous relations between himself and Mr. Stegmann, and the reason that we did that was that in the course of the first meeting that I had with Mr. Parker, the question had been generally raised as to what transactions he had been involved in with Mr. Stegmann in the past, and the only—there was not any detailed questioning. The only thing that he stated about it was that he had had this—the fact that he had a mortgage on Stegmann's house was discussed, and after that [1902] first meeting when we went back to the title office, we were run-

(Testimony of James K. Buell.)

ning a quick check on the index under the name of Stegmann and found the record of the Gopher Valley mortgage which, which seemed strange to us since he had not mentioned anything about it that afternoon.

We then had a title search—not a title, but a judgment and property search made on Mr. Stegmann and had a few inquiries made and also attempted to contact Mr. Stegmann personally, but that was the extent of the investigation into Mr. Parker or Mr. Stegmann.

Q. Well, what investigation did you make in Hood River?

A. In Hood River we talked with Mr. Abraham, and we had done that because of the fact that Mr. Parker, although I believe it was Mr. Francis Marsh or Gene Marsh who first advised us, that Mr. Abraham had advised Mrs. Parker that Paul Winans had told him about some defects in the title after the deed had been delivered and the money paid, and we went to see Mr. Abraham about that. We also went up to the——

Q. That is, you knew then, before you went to see Mr. Abraham, that Mrs. Parker had stated that when he brought the deed back, at least after he brought the deed back, and that same day he had told her of what Winans had said about the possible defect in the title, you knew that before you went to talk to Mr. Abraham, that she had made the statement?



(Testimony of James K. Buell.)

A. Well, we didn't know it in the sense of, with any detail [1903] as to what had occurred.

Q. Yes?

A. We knew that, just the slight or the simple facts that they had related to us that Mr. Abraham had mentioned Mr. Winans advising him of some defect in the title.

Q. Then you went and saw Mr. Abraham in the latter part of October?      A. Yes.

Q. And discussed with him his connection with the deal?      A. Yes.

Q. Did he remember then that he had told her that?      A. That he had told her that——

Q. Yes.      A. Yes.

Q. He remembered that without being prompted? You heard the testimony that he later, that he had overlooked the fact that he had said that?

A. Which version of his recollection are you referring to now? I can put it this way: When I went in to see Mr. Abraham he told me substantially what he testified on the witness stand.

Q. Yes, including the fact that after he came back from getting the deed he told Mrs. Parker the Winans had said something about a possible defect in the title?      A. Yes.

Q. Including that, yes, and then what further investigation [1904] did you make in Hood River at that time?

A. We went up to the Parkdale Ranger Station that day. This is when Mr. Alstadt and I were together.



(Testimony of James K. Buell.)

Q. Yes?

A. And talked with Ranger Holtby, but could not obtain much information from him.

Q. Did you look at any of the records up there?

A. We saw their status book, as they call it.

Q. Did you see a notation that two men had been up there on August 13th?           A. No.

Q. You did not see that?

A. Did not see that was there at all, didn't see Mr. Parrott or Mr. Petersen that day, I think.

Q. Who did you see that day?

A. I think we did not see Mr. Parrott or Mr. Petersen that day.

Q. Yes, I understand, but who did you see?

A. Mr. Holtby, the District Ranger.

Q. Of course, it was after the four conferences—well, the two that you attended—that you made this offer that is in evidence by a written form of contract, by the two written forms of contract?

A. No.

Q. After the conferences you had with Mr. Parker that you testified to? [1905]

A. No, as I recall, the last offer was submitted to Francis Marsh on October, by letter of October 15th.

Q. The last conference was October 11th or 12th, you said, yes, and at that conference you submitted one of your forms of contract?

A. That is correct.

Q. And then a few days later you submitted a different one?

(Testimony of James K. Buell.)

A. We submitted, to waive continuity, on September 27th we arrived at a tentative agreement.

Q. That was all?

A. All, and I had prepared or was half way through preparing a draft of that agreement when I received a telephone call from Mr. Dashney advising that Mr. Parker had either been in or had called him, I forget which, and did not want to go ahead with that agreement, and stated—Mr. Dashney advised me that Mr. Parker had stated that he did not want to sue Stegmann and that Mrs. Parker was either having some sickness or trouble, and they just preferred to settle on the basis of failure of title to the 40 acres, and we could go ahead and do what we wanted.

Q. Yes?

A. Then we arranged — Mr. Dashney advised that he did not want to proceed further because they were primarily Francis' clients, Francis' or Gene's, and he would rather wait until they got back. [1906]

I went ahead and prepared a smooth draft of that contract in our office to submit to them again when we had our next meeting, which I did.

Q. Which you did?

A. And at that meeting we arrived at another tentative oral agreement for the settlement by payment of \$110,000 cash and ten thousand three hundred at the time of the final decree.

Mr. Francis Marsh called me from McMinnville late the following day, which was a Saturday, to

(Testimony of James K. Buell.)

advise that he had been instructed to withdraw that offer also. I went ahead and prepared a smooth draft agreement in accordance with the terms that we had orally agreed upon on Friday, the 11th or 12th, and submitted it on October 15th, I think is the date, but somewhere in that vicinity, submitted it to Mr. Marsh and told him that we would renew the offer in that form. Then I think possibly the rest of the transaction is detailed in the correspondence between the Marsh brothers and my firm.

Q. Did you understand that the — insofar as their refusal to contract was based because they did not want to sue, was that because they did not want to sue Stegmann or just because they didn't want to sue in their name anybody that they wanted you to sue in your own name?

A. I was advised that their reason for not wanting to go ahead with the first contract was that they did not want to sue Stegmann. At the second meeting, the question of suing Stegmann [1907] was not discussed so much, and Mr. and Mrs. Parker just simply repeated the stand that they did not want to sue in their own name, and it was not a question of not wanting to sue any particular person.

Q. But you had never had any question but what the question of the right or the lack of right to sue Stegmann was something that the Marshes and Dashney felt was—I will start over again—that the Marshes and Dashney were of the opinion that there was no legal right to sue Stegmann because

(Testimony of James K. Buell.)

all they had from him was an assignment of an option?

A. Well, they felt that that was a weak case, and I was inclined to concur with them.

Q. You did not disagree too strongly with them, did you?

A. I thought we could spell out a cause of action based on mutual mistake.

Q. You will recall that in the original complaint, aside from a statement, general statement in very general terms, that they didn't—Mr. Parker didn't perform the obligations on his part—you do not allege that he had any notice of this defect at all?

A. Yes, I think——

Q. Up to a point just prior to about, until after he paid the entire consideration?

A. I believe you will find an allegation that at the time of the transaction they had notice of the claim of the Government. [1908]

The Court: Who had notice?

Mr. Jaureguy: You have made two allegations.

The Witness: Referring to the Parkers.

The Court: Is that the complaint that was filed, you mean?

Mr. Jaureguy: The original complaint.

The Court: Or the second?

Mr. Jaureguy: No, the original complaint. That is in paragraph——

The Witness: I think maybe I could find it.

Mr. Jaureguy: Twenty-five. You allege that none of the Winans advised the Parkers or Steg-

(Testimony of James K. Buell.)

mann of the fact of, or the basis of the claim until after the execution and delivery of the deed. Do you remember that?           A. Yes.

Q. Then, paragraph 27, you allege that prior to the issuance of a policy of title insurance set forth in Exhibit E—that is your own policy—defendants Chet Parker and Lois Parker knew of the claim of the Government. Aren't those the only two allegations you make?

A. As I recall, I think those are the only two without going into making the detailed steps, but I cannot recall offhand any others.

The Court: What is the relevancy of this testimony, Mr. Jaureguy?

Mr. Jaureguy: Well, that after they made all these [1909] investigations, they still come to this conclusion that Parker is entitled to recover. That is substantially what it means.

The Court: Under the Federal Rules, they did not even have to spell it out with such particularity, which they actually did. These are notice pleadings, and the mere fact that they could not have been acquainted with all of the facts at the time the complaint was filed does not preclude them from relying on all the evidence adduced at the trial.

Mr. Jaureguy: That is not the purpose of this examination at all, your Honor. I do not question the sufficiency of it. As a matter of fact, it has been superseded by a later one, but I am just showing that——

The Court: Are you claiming estoppel?



(Testimony of James K. Buell.)

Mr. Jaureguy: No, I am not claiming estoppel. This is merely prior statements by this witness who prepared this document.

The Court: Go ahead.

Mr. Jaureguy: But I think I am through with it anyway.

The Court: Go ahead.

Mr. Jaureguy: That will be all.

The Court: Mr. Ryan?

### Cross-Examination

By Mr. Ryan:

Q. When this offer was made of—what was the offer you made, \$110,000? [1910] A. Yes.

Q. And the balance was to be paid at the conclusion of the action or at the time of filing the suit?

A. No, at the time of the final decree.

Q. At the time of the final decree. That would have made the total number of \$125,000?

A. That would have made the sum of \$120,300.

Q. You at no time made an offer to pay the full amount of the policy? A. No.

Q. Without any stipulation? A. No.

Q. Was there any discussion about how this \$110,000 was going to be paid? Was there cash available for that?

A. Yes, cash would have been available. It was to be paid as is noted in my letter to Mr. Marsh. The time of payment was left blank in the contract, and I instructed Mr. Marsh that upon signing of



(Testimony of James K. Buell.)

the agreement by Mr. and Mrs. Parker, to fill in the date for payment of the \$110,000 two weeks following the date of their signing of the agreement

Q. But in view of the fact that they would not sign this contract, no tender was ever made of that amount of money?           A. No.

Q. Did the Parkers demand or ask for payment in full of the face of the policy? [1911]

A. After the negotiations had broken down, they made, through their attorneys, made an allegation or statement that the amount of their damage was in excess of \$125,000, but offered to settle for, I think it was \$110,000.

Mr. Jaureguy: That is in evidence, I think, isn't it?

The Witness: Yes, everything between our firm and the company and the Parkers following October 12th was correspondence between my firm and Mr. Marsh.

Q. (By Mr. Ryan): It was your understanding at the time the contract was paid that they were seeking payment of the face of the policy, and a preferred contract was written?

The Court: Well, let us assume that. Go ahead.

Q. (By Mr. Ryan): Did you ever in your investigation——

The Court: I do not see that it makes any difference.

Mr. Jaureguy: I doubt if it is true. It might have been—I don't think they even discussed it.

(Testimony of James K. Buell.)

Q. (By Mr. Ryan): Did you ever contact Mr. Stegmann during the course of these investigations?

A. Mr. Mears contacted Mr. Stegmann by phone. He was never able to contact him personally on person-to-person, in person.

Q. Did he talk with him on the phone?

A. Yes.

Q. Was Mr. Stegmann asked any questions that you have knowledge of?

A. Was he asked any questions? [1912]

Q. Yes. A. Yes.

Q. What was he asked?

The Court: Do you want to have all this hearsay go into evidence?

Mr. Ryan: No, I will withdraw it.

The Court: It can come in if you keep asking it.

Mr. Ryan: No, that is the extent of my questioning.

The Court: Mr. Strayer?

### Cross-Examination

By Mr. Strayer:

Q. Is there anything further Mr. Buell, that you think should be related regarding these conferences of the investigations you made?

A. No, I cannot think of anything offhand.

Mr. Strayer: I have no questions.

The Court: Mr. Krause?

(Testimony of James K. Buell.)

Redirect Examination

By Mr. Krause:

Q. Mr. Buell, I have neglected to follow up with that second meeting where you met with Mr. Parker.

Did Mr. Parker on that second meeting that you had with him say that he had met Winans on any other occasion than the one that he had referred to in his first meeting with you?

A. No, he didn't. [1913]

Q. Did he say anything regarding any representations made by Winans in addition to the statement he had made before that he knew nothing of any defects?

A. Nothing further was said about it at the second meeting.

Q. Did you ever get any statement in writing from Mr. Parker before the suit was commenced as to his connection with the whole deal?

A. No, we did not.

Q. Did you try to get a statement in writing from him? A. No.

The Court: What is the number of the contract, the proposed contracts?

The Witness: I think it is 8, 9, 10 and 11.

The Court: Are they in evidence?

The Witness: Yes.

Q. (By Mr. Krause): Did you tell Mr. Parker that this information that you sought from him as

(Testimony of James K. Buell.)

to what Winans had represented or what Parker had known about the condition of the title was to be used by you in a lawsuit that would involve the Winans?           A. Did I tell Mr. Parker that?

Q. Yes.           A. Well——

Q. Maybe I can make it a little clearer. Your information that you were eliciting from him as to what Winans had said to him or represented and what he knew about the condition of [1914] the title, good or bad, that that information was needed by you in the preparation of a complaint that would be brought against the Winans?           A. Yes.

Q. That you informed him of?           A. Yes.

Mr. Krause: That you, I think that is all.

### Recross-Examination

By Mr. Jaureguy:

Q. At what conference did you inform him of that?

A. The one on September 27th with Mr. Alstadt and Mr. Dashney.

Q. That is the first one?

A. Yes, we also discussed at that meeting in considerable detail Mr. Parker's residence, as to whether or not it would support a suit based upon diversity of citizenship in the Federal Court, in considerable detail.

Q. There is in evidence, I think, a letter you wrote subsequently asking for that information?

A. There is; that is right.

(Testimony of James K. Buell.)

Q. You asked him orally, and then you asked him to state it in writing, too?

A. Some of the—we did not ask him for all of the information contained in the letter that you refer to; however, we generally asked him how long he had resided in Vancouver, and Mr. Dashney went to the files of Marsh & Marsh and got [1915] out their file and Mr. Parker's—I think his mother's—or some member of his family's estate that had been recently probated to ascertain in there that his residence was stated as being in Vancouver.

Mr. Jaureguy: That is all.

Mr. Krause: We have nothing further.

The Court: Was Mr. Parker given a copy of Exhibit 9, also 8 and 7, any one of these three contracts?

Mr. Strayer: If I can interrupt for a moment to remind you, Mr. Buell, one of those is a draft that has no front page.

The Court: Yes, I see that. Seven is the first proposed contract and nine is the second proposed contract. Had you handed that to the Parkers, or copies of either of those, these agreements?

The Witness: I had handed it to Francis Marsh at the meeting in our office, and he and Mr. and Mrs. Parker went into Mr. Griffith's office which was vacant at the time and were in there, went over it a period of about 20 minutes, I think.

The Court: Did they object to any of the language in the contract itself?

(Testimony of James K. Buell.)

The Witness: No, other than the provision for suing, they didn't want to sue in their names at that particular meeting.

The Court: Did either of the Parkers affirmatively represent that the recitals in the agreement were correct?

The Witness: No, there was no detailed discussion of the [1916] recitals at the time.

The Court: That is all.

### Recross-Examination

By Mr. Jaureguy:

Q. As a matter of fact, there was no discussion of the recitals at all, was there? A. No.

Q. You said no detailed discussion. I wanted to get that straight.

A. Well, I am satisfied there was not any discussion of the recitals, as such.

Q. In other words, Mr. Marsh and the Parkers came out where the rest of you were and discussed their objections to it and their objections were twofold, as I recall, and I think we have gone over them, and that discussion did not involve recitals, and you do not know at all, do you, except what you might have gotten from the deposition, that Mr. and Mrs. Parker knew anything about the recitals when they came out?

A. Knew anything about the recitals?

Q. Knew what the recitals were in the contract?

A. No, I have no first-hand knowledge.

Mr. Jaureguy: That is all.



(Testimony of James K. Buell.)

Recross-Examination

By Mr. Strayer:

Q. Mr. Buell, I think you had better straighten the record out [1917] on just what those three contracts are. It is pretty confusing.

A. If I could have either a list of the exhibits——

The Court: Take them all.

(Documents tendered to witness.)

A. Exhibit Number Seven is the first draft of the first proposed contract and has some minor pencil corrections in it which were in Mr. Griffith's handwriting. That is the agreement with the first page on it. Exhibit Number Eight is a smooth draft of the first proposed agreement which was submitted to Mr. Marsh and Mr. and Mrs. Parker at the time of the meeting on October 11th. It does not have a first page because the first page on the the rough draft agreement was used on both, so there was only one for each or for each of the two. Exhibit Number Nine is a copy of the second proposed contract, and the original draft of that was forwarded to Marsh & Marsh.

The Court: Was there any discussion with Mr. and Mrs. Parker to the effect that in a title suit they could not prevail unless there had been a misrepresentation made to the Parkers? In other words, if the Parkers knew of a defect, then Title

(Testimony of James K. Buell.)

and Trust could not prevail if it filed the action, the suit?

The Witness: I do not recall it being stated as bluntly as that. They were both advised that the basis of the suit would be misrepresentation of the state of the title by the Winans or a concealment of their knowledge of the defect.

The Court: In other words, through these negotiations you [1918] assumed that the Parkers had no knowledge of the defects?

The Witness: That is right.

The Court: And it was on that basis that you were negotiating?

The Witness: And also that Mr. Stegmann had no knowledge of the defect.

The Court: And the suggestion to make Mr. Stegmann a party defendant was to recover the \$25,000 from him on the ground that neither the Parkers nor Stegmann were aware of the defect, and, therefore, they were both dealing under a mistaken, under an assumption that the title was good?

The Witness: Yes.

The Court: In other words, you tried to void that contract for mutual mistake of fact?

The Witness: Yes. With regard to the preference to sue in the Parkers' name rather than the title company's, I believe I explained to Mr. Parker, I am sure but I am not sure at which meeting, that the reason that we preferred to sue in his name rather than in the company's name alone was that we felt that the strongest case for, was for re-

(Testimony of James K. Buell.)

seission which would involve a tender back of the title to Government Lot 1; that a case against the Winans family just based upon failure of title to the 40-acre tract where we would be in a position of trying to affirm part of the contract would not be as strong a suit.

Mr. Strayer: May I ask a question, your [1919] Honor?

### Recross-Examination

By Mr. Strayer:

Q. One thing that occurs to me, Mr. Buell, which you may have overlooked and it may be of some significance if the Court were to have an explanation of the reason for the change, I think your first agreement was for the payment of \$90,000. Then it went up to \$110,000 the second agreement. Will you explain that to the Court?

A. Well, under the first agreement, if we were unsuccessful in rescinding the transaction, then Mr. Parker was to retain title to Government Lot 1 at the stated valuation in the assignment of the option of \$35,000, and in the first meeting that I had with him, he stated that he felt that \$35,000 was a fair value of Lot 1.

Then in the second meeting in my office when Francis Marsh was present, Mr. Parker raised the question that he didn't think that the Lot 1 was as valuable or could be credited with a value of \$35,000 valuation because it would not be economically as feasible to log it in the absence of the 40-acre tract, and so under the second proposed agree-

(Testimony of James K. Buell.)

ment he was to be indemnified for all of his out-of-pocket loss, and if the suit for rescission or whatever suit we brought failed, why, the title company was to get the title to the Government Lot 1 and dispose of it as best they could.

Mr. Strayer: That is all. [1920]

### Recross-Examination

By Mr. Jaureguy:

Q. You recognized, too, Mr. Buell, did you not, that both practically and legally an indemnitor's right of subrogation is not identical with an indemnitee's original action, that is, that your right of subrogation might fail even though the Parkers, if they sued, themselves, might be entitled to prevail?

A. Well, that is always a hazard in subrogation; that is true, and I was aware——

Q. Both as a legal proposition and also as a practical matter?

The Court: Well, if he didn't know it before, he knows it now since you have told him.

The Witness: I knew it at that time.

Q. (By Mr. Jaureguy): You knew it at that time?

That is all.

(Witness excused.) [1921]

HERBERT ALSTADT

called as a witness in behalf of Third-Party Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Will you state your name, please?

A. Herbert Alstadt.

Q. And your business?

A. Vice-president, Title and Trust Company.

Q. Are you a lawyer admitted to practice law, Mr. Alstadt?      A. I am, yes.

Q. And many times you advise lawyers on title questions, don't you?      A. Yes.

Q. Mr. Alstadt, when did you first become acquainted with Mr. Parker, that is, Chet Parker?

A. With Mr. Parker?

Q. Chet Parker, yes.

A. On September 20, 1951.

Q. Where did you meet him?

A. At McMinnville, in the office of Marsh, Marsh and Dashney.

Q. Was Mrs. Parker there that day?

A. She was not.

Q. Who else was present at the time that you talked to Mr. Parker? [1922]

A. Mr. Dwyer and Frank Marsh, I believe.

Q. Mr. Dwyer is the Ed Dwyer who is president of the Title and Trust Company?

A. That is right.

Q. Did you at that time ask Mr. Chet Parker



(Testimony of Herbert Alstadt.)

how many times he had met Paul Winans or any of the Winans who were the sellers of this property?

A. I believe that that question was asked at that time. Yes, it was asked, I also think later, but on the first meeting we asked if he knew Mr. Winans. That is the way the question was put.

Q. What did Mr. Parker answer?

A. He said that he had met him once on a survey party up to the Lost Lake tract.

Q. On the subsequent meeting the 27th of September, you were there, too, were you?

A. I was.

Q. Do you recall whether that same statement was made while Mr. James Buell was also present?

A. I think it was, yes. I am sure it was because that meeting was more or less of a rehash of the first meeting.

Q. At either of these meetings, Mr. Alstadt, what, if anything, was said by Mr. Parker with respect to whether or not he knew of any defects in the title at the time he took, received the deed to this property? [1923]

A. Well, to my knowledge I don't believe he was asked that question.

Q. While you were present?

A. That is correct.

Q. Are you talking about the first meeting now?

A. The first.

Q. Or both meetings?

A. Or the third.



(Testimony of Herbert Alstadt.)

Q. Well, I am thinking only of two meetings, the 20th and the 27th, at the moment.

A. Yes, I am sorry, the 20th and the 27th; that is correct, those two meetings.

Q. 20th and 27th? A. Yes.

Q. Did Mr. Parker make any statements with respect to whether or not any communication had been made to him by any of the Winans regarding the condition of the title?

A. Mr. Parker, no, he didn't make any statement to that effect.

Q. That you heard?

A. That is correct, that I heard.

Q. Were you present in these meetings during the entire time that Mr. Buell was in there, at the second meeting?

A. At the second meeting, I am sorry if I got confused because I have four meetings to think of. That second meeting that you speak of is the third one that I have in mind. That is the [1924] one on the 27th.

Q. That is the one on the 27th? A. Yes.

Q. What I was asking you about now is whether you recall any statement made by Parker as to whether any disclosures or representations of title had been made to him by any of the Winans?

A. No, I do not recall at all any statement to that effect.

Q. Do you recall whether you were present at all times in that meeting when Mr. Buell was talking to Mr. Parker?

(Testimony of Herbert Alstadt.)

A. I left that meeting for a short time to make a phone call. That was just before five o'clock.

Q. At any meeting that you had with Mr. Parker and/or Mrs. Parker, did they, or either of them, make any statement to you, first of all, as to whether or not they had knowledge of any defect in the title to the forty acres?

A. No, they did not.

Q. They made no statement to you about that?

A. No.

Q. Did they make any statement to you as to whether or not any representations had been made to the sellers?

A. No; no representations at all.

Q. They did not claim any representations?

A. No.

Q. Do you recall whether it was specifically asked as to [1925] whether any representations had been made by the sellers?

A. I don't recall it being asked at all, no.

Q. You don't recall it. Now, those questions, of course, relate to any meeting that you had with the Parkers.

At any subsequent meetings, did they make any statements to you, either that they knew nothing about the defects in the title or that representations had been made to them that the sellers had good title?

A. No, Mr. Krause, they made no statements

(Testimony of Herbert Alstadt.)

whatsoever along that line because I think we all assumed that they knew nothing about the defect in the title.

Q. It was assumed that they did not know about it?           A. That is correct.

Mr. Krause: I think you may cross-examine.

### Cross-Examination

By Mr. Jaureguy:

Q. Was there anything that happened at any of those meetings that convinced you that up to that time they did not know, they had never learned that the Winans knew of this defect of title?

A. Well, at the first meeting, Mr. Jaureguy, Mr. Parker told us that he was familiar with the failure of school lands. He knew about the fact that a school land would fail, or school land title would fail if it had not been completely surveyed.

Q. Well, now, did he expand on that, or was that in answer to questions? [1926]

A. No, it was not, it was in the general discussion. As a matter of fact, at that time he said that he also carried a Metsker map in the back of his car and that he checked on whether or not a school land section had been surveyed.

Q. Go ahead, answer my question.

A. Didn't I?

Q. No.

A. I am sorry. Would you ask the question again?

Q. Whether or not anything occurred that con-

(Testimony of Herbert Alstadt.)

vinced you that when Chet Parker purchased the property, or when he first met you he was convinced that the Winans did not know anything about a defect in title?      A. That he was convinced?

Q. Yes.

A. No, I don't think the question was asked.

Q. Do you remember as to whether or not the correspondence between the Winans and the Pacific Title Company was ever shown to the Parkers?

A. Yes, it was.

Q. When was that?

A. It was either at the first or the third meeting.

Q. Don't you think that could have been at the fourth?

A. It was also shown at the fourth. It was shown twice.

Q. You think it was shown twice?

A. I know it was because I had it with me when I went to [1927] McMinnville, and on the way back I became apprehensive about carrying around this file. I took it out of the car and took it directly over to the photostat people and had copies made so I would not lose the file, and that was on the return from one of those trips to McMinnville.

Q. What was the occasion of showing it to the Parkers?

A. We did not know where we were in this case, and we wanted to show him that there was a failure of title and that there was previous knowledge of this failure by the Winans.

Q. Did their reactions convince you that the

(Testimony of Herbert Alstadt.)

Winans never had told them about the defect of title?      A. Yes.

Q. Just tell us what that was.

A. Well, I don't believe anything was said particularly. Mr. Winans looked somewhat surprised.

Q. Mr. Winans?

A. I mean, pardon me, Mr. Parker seemed surprised at the fact that there had been a previous claim, that there had been a settlement on the claim by Pacific.

Q. Well, I think the way you expressed it at the deposition was that by inference he told you they had never told him, and that inference was based on a surprised look on his face when he saw the correspondence.

A. I just said he looked surprised.

Q. Yes, would that express your thoughts on the matter? [1928]      A. That is right.

Q. Would you say the same thing about Mrs. Parker?      A. Yes.

Q. That when she saw it I think you said she was very, had a pronounced look of surprise?

A. That is correct.

Q. So that while they didn't expressly say anything to you or represent to you and you didn't ask them; nevertheless I take it that their reactions to seeing the correspondence made it clear to you that they never knew anything about the defect of title when they purchased the property?

A. It gave us that impression.



(Testimony of Herbert Alstadt.)

Q. And rather a pronounced impression; was it not?

A. Well, I can remember it more distinctly as far as Mrs. Parker is concerned than I can Mr. Parker.

Q. She was surprised; she was astounded; is that the way you put it?

A. I don't know whether I used those words or not.

Q. Now, at this third, at what you think of as the fourth meeting, but it was the third meeting when the Parkers were present, that was up in the office of Griffith, Phillips & Coughlin?

A. Yes.

Q. What reasons did the Parkers give for not wanting to sign the contract? [1929]

A. One of the reasons was that Mr. Parker more or less resented our investigating him, and the other one was that he didn't want to sue Stegmann.

Q. Didn't want to sue Stegmann?

A. Didn't want to sue Stegmann.

Q. Wasn't their attitude that they didn't want to sue anybody; that they thought that you ought to sue?

A. Well, I think that they always contended that, yes, right from the start.

Q. Yes, well, I think that Mr. Buell in his opening statement said their attitude there at the beginning was not particularly that they didn't want to sue Stegmann but they just didn't want to



(Testimony of Herbert Alstadt.)

sue anybody, but you think that it was really that they didn't want to sue Stegmann?

A. That was one of the reasons advanced.

Q. But the other reason advanced was that they claimed that you had made false charges against them to the officers of the First National Bank; was that it?

A. I never heard that statement made, no.

Q. What was it?

A. He just simply resented the fact that we were investigating him.

Q. Didn't they refer to the First National Bank of McMinnville?

A. Not particularly, as far as I am concerned, no.

Q. Didn't they refer at least to insinuations that were being [1930] made that they had been in a conspiracy with Winans? A. No.

Q. But, at any rate, they resented the investigations? A. That is correct.

Q. And didn't they—and that those two reasons were given for not wanting to sign a contract with Title and Trust Company?

A. That is as far as my memory goes on it, yes.

Q. Didn't they make a statement that they understood that under their contract they were entitled to be paid directly and didn't have to be made parties to lawsuits?

A. I don't recall them making that statement, no.

(Testimony of Herbert Alstadt.)

Q. You do not recall. All right, thank you, that is all.

Mr. Ryan: I have no questions.

Mr. Buell: We have none.

Mr. Krause: We have nothing further.

The Court: That is all.

(Witness excused.) [1931]

Mr. Krause: We will call Mr. Chet Parker. He is our last witness.

### CHET L. PARKER

recalled, having been previously sworn, testified as follows:

#### Direct Examination

By Mr. Krause:

Q. Mr. Parker, what is your net worth?

Mr. Jaureguy: Objected to as incompetent, irrelevant and immaterial, no foundation laid.

The Court: Objection overruled, Mr. Jaureguy, there is an allegation of punitive damages here.

Mr. Jaureguy: My objection is on the ground that the allegation is not sufficient. There must be some foundation laid of some malice or other conduct that warrants, at least is evident, warrants punitive damages.

The Court: Well, I am not going to pass on the sufficiency of the evidence now. Objection overruled.

Mr. Krause: Go ahead, please, Mr. Parker.

The Witness: Well, I suppose that would de-

(Testimony of Chet L. Parker.)

pend on several things. One is the money that I gave your clients, what happened to that, whether I have any of that coming. Number 2 is whether the front lot has a good title and whether some of my assets are, could turn into cash, and so [1932] forth. Now, I could put limitations that would be helpful to you, I think, to make this short and brief.

Q. Well, having in mind that you charged off \$85,000 in your 1951 return of this loss on this property, if you do lose it, then you can go ahead and give us what your net worth is, having that in mind.

A. And taking and considering I get the front lot, right?

Q. You suppose you have title to the, to Lot 1.

A. Oh, I would say possibly a minimum of \$70,000.

Q. Well now, what is the balance owing you on the Bear Creek contract?

A. Oh, they have paid me in full, sir.

Q. You have been paid in full on that?

A. Yes, I have been paid the price I asked.

Q. What do you have on deposit in the banks today?

A. Well, now, I have never been able to, I have never been able to know what it is, but it would not be very much.

Q. Well, give us your best estimate.

A. Well, anywhere from \$50 to 10,000.

Q. You do not know whether it is one or the

(Testimony of Chet L. Parker.)

other?           A. No, I don't know at all.

Q. All right, how much money in your safe deposit boxes in cash?

A. Maybe we have—my wife would be able to answer that, I think, but I think that possibly, oh, fifteen thousand maybe. [1933]

Q. Cash in safety deposit boxes?           A. Yes.

Q. What other real property do you own?

A. Do you want a list of it right now?

Q. Yes, just—you do not have to give us legal description. Tell us what it is.

A. Well, of course, you know I might omit some from my memory.

Q. We will excuse you.

A. Would that be permissible?

Q. If you will give us your best estimate, your best memory on it, that will be satisfactory.

A. Well, let's see——

Q. First of all, do you have a home?

A. Not a very good one, no, no.

Q. You own a residence, do you?

A. No, I just rent.

Q. You just rent now?           A. Yes.

Q. Why did you say first then that you do not have a very good one?

A. What I mean, it is not a very good rental, either.

Q. I see. My question was misleading. Do you still—do you own any residences or any houses in McMinnville?           A. No, I do not, sir. [1934]

Q. What about this one that you had the mort-

(Testimony of Chet L. Parker.)

gages on; is that still belonging to Mr. Stegmann and you have mortgages against it?

A. No, I sold it.

Q. You sold it? A. Yes.

Q. All right. Now then, what timber do you own?

A. Well, I think there is some timber, about a million feet on the Pea Vine tract. I have not been on it, but I think there is in snags.

Q. About a million feet on the Pea Vine tract?

A. Well, one man said that someone was logging on it last year, and if that is so, why I do not know if it is there any more. I have not been up there, but it should be there, and it should—there should not have been any logging on it.

Q. Well, what is the stumpage worth, approximately? A. Well—

The Court: Let us forget about the Pea Vine and go into something else.

Q. (By Mr. Krause): What other property besides the Pea Vine timber?

A. Let's see, I own the tract in, at Beacon Rock.

Q. What is its value?

A. I don't know, sir.

The Court: When did you buy it? [1935]

The Witness: Last year.

The Court: How much did you pay for it?

The Witness: Eighty some-odd thousand dollars.

Q. (By Mr. Krause): Is it still worth eighty thousand dollars?

(Testimony of Chet L. Parker.)

A. No; no, I don't think so. Then some of it burned, I had a fire up there, some of it burned. No, it is very speculative. It depends on the market what that thing is worth. It is snags, and what I think it is worth and what it is actually worth is two different things entirely.

Q. We just want your estimate of its value.

A. Well, I suppose what I paid for it would have something to do with it pretty close. I bought it from Herman Tinsler, and he should know what it is worth, and he sold it to me so I certainly must have paid enough for it.

Q. You have how many automobiles at the present time?

A. I think I have a pickup and a car.

Q. What sort of a car? A. Cadillac.

Q. What is its value?

A. I would say probably \$4,000 before my wife knocked the front end off of it.

Q. Do you still have all of the equipment that is listed in your '51 income tax return?

A. I am very doubtful.

Q. Do you have an International tractor? [1936]

A. No, I sold—no, I haven't any International tractor.

Q. What about the Kelso property? Do you still own that?

A. No, I do not have that any more.

Q. You do not have that? A. No.

Q. But you still own the Peterbilt Logging truck? A. Yes, sir.



(Testimony of Chet L. Parker.)

Q. What is its value now?

A. Anywhere from 2,000 to probably 6,000, somewhere in there.

Q. From 2 to 6? A. I am just guessing.

Q. On May 7, 1951, you paid \$6500 for it; is that right? A. Thereabouts, yes.

Q. And the depreciation that you took off for the year 1951 was \$1,354; is that about right for the depreciation?

A. I didn't set it up or anything. I don't know, I suppose.

Q. About 20% of the value?

A. I would imagine.

Q. And the Trombley trailer, do you still have that?

A. Well, it is part of the truck. It is setting on the truck now. I have not used it for the last year. It is still sitting there.

Q. You paid \$2,000 for that on the same date that you bought the Peterbilt?

A. I suppose; I don't know. [1937]

Q. Do you still have the Yamhill County farm?

A. Yamhill County farm? I don't think I ever had a Yamhill County farm.

Q. Well, you list it in your schedule of depreciation in your 1951 income tax return.

A. Well, that is fine. I guess I did then, but I don't know where it is at unless it is that little chicken ranch that I left there. If it is a three-acre

(Testimony of Chet L. Parker.)

piece, why I owned—if that is called a farm, why then I owned it, and I have not got it.

Q. Well, if you have got a chicken house down here that you put down as buying that cost you \$2,500.

A. That must be the three acre piece right on the edge of Mack, that you are referring to. If that is the case, why, I don't own it any more.

Q. On the Yamhill County farm you have got a D-8 cat that you put down at \$13,000. Do you still have that one?      A. I do not.

Q. You recognize this Yamhill County farm now, do you, as still being in your possession?

A. No, I do not. It is not in my possesesion. I have sold it. I told you twice now.

Q. You still have that Hood River Log Dump site, do you?      A. No, I do not.

Q. You sold that, too? [1938]

A. Yes, I sold it. I don't have it.

Q. Who did you sell it to?

A. I have forgot, Dubois-Matlek, I think it is, at Vancouver, Washington. They are timber people. They needed the timber, and I sold it to them for \$1,500, as I remember.

Q. You have told us about the two tracts, Pea Vine, and this other one that you paid \$80,000 for. What other timber do you own?

A. What other timber do I own?

Q. Yes.

A. Well, I can't remember of any more that I own.

(Testimony of Chet L. Parker.)

Q. You do not think of anything further?

A. No, I can't think of any further.

Q. Any other land that you own that you have not mentioned?

A. No, well, other than the thing at Lost Lake. I can own some of that.

Q. Well, we all have that in mind, and you mentioned it earlier.

A. Well, I believe that is all.

The Court: Do you own any stocks and bonds, government bonds?

The Witness: I believe a few hundred dollars worth, I think, I inherited from my grandmother. I think she left me two hundred dollars worth.

The Court: Is that all the securities that you have? [1939]

A. Of no consequence, less than a thousand dollars or so.

The Court: Have you any loans out?

A. Oh, yes, we got some of those.

The Court: Approximately how much?

A. Oh, golly, I don't know, not to exceed I don't think \$20,000, sir, or 25.

The Court: Are there any other assets that you have?

The Witness: No.

The Court: Is that all, Mr. Krause?

Mr. Krause: That is all.

The Court: Any cross-examination?

Mr. Jaureguy: No cross-examination.

Mr. Ryan: No cross-examination.

(Testimony of Chet L. Parker.)

Mr. Strayer: No.

The Court: That is all.

(Witness excused.)

Mr. Krause: That is our case, your Honor. [1940]

\* \* \*

### WALTER L. BRYSON

a witness produced in behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows: (Rebuttal Testimony.)

#### Direct Examination

By Mr. Buell:

Q. Could I have Exhibit 117, please. Mr. Bryson, you are the Secretary of the Multnomah Plywood; is that correct, sir? A. I am, sir.

Q. And you were in August and September of 1951 also; were you not? A. I was.

Q. I will hand you Exhibit 117 which you may want to refer to in refreshing your recollection if you need to, which was a copy of the minutes of the Board of Directors meeting of that co-op August 20, 1951, when Mr. and Mrs. Chet Parker made the proposition to your company for the sale of a tract of timber land up on Lost Lake. Were you present at that board meeting? A. I was.

Q. I believe your signature is on that document, and you furnished that to Mr. Jaureguy?

A. It is.

Q. At his request, did you? A. It is.

Q. Do you recall, or did you yourself ever have

(Testimony of Walter L. Bryson.)

occasion to [1943] meet Mr. or Mrs. Chet Parker following that meeting?

A. I can't recall accurately whether I met Mr. and Mrs. Parker following this meeting or immediately prior to this meeting. My opinion is that it was within the same week that this meeting was held.

Q. Do you have any recollection as to the day of the week that occurred on?

A. In this meeting——

Q. No, I mean the other occasion that you met with Mr. and Mrs. Parker.

A. I think it was Saturday morning of this same week.

Q. Was there anything said at that time about your company making a down payment of any sum to buy up the Parkers' Lost Lake property?

A. I'm quite sure that it was made in the presence of Mr. and Mrs. Parker, but it was made to me that same morning prior to their entry into our office. I think it was prior to, but I don't know whether it was repeated after I had met them.

Q. Who saw you about making a payment, and how much of a payment was suggested?

A. Mr. Clyde Smith, our vice-president and timber buyer.

Q. And how much of a payment was mentioned?

A. Mr. Clyde Smith asked me to have a check made for \$25,000 as a down payment to buy up this timber.

Q. Were you the person that he wanted to sign the check? [1944]

(Testimony of Walter L. Bryson.)

A. Mr. Smith and myself were authorized to sign the checks.

Q. Did you issue or draw such a check?

A. I did not.

Q. For what reason?

A. The Board of Directors had not approved of the purchase of this timber.

Q. Did the company have at that time any other information about this timber or the amount of timber on it other than the reconnaissance cruise that Mr. Kenny had submitted to you?

A. I think about the first time that it ever came to my attention with regard to any cruise on this timber is at this Board of Directors' meeting in which Mr. and Mrs. Parker were present.

The Court: We will have a short recess.

(Recess taken.)

(Trial resumed.)

### WALTER L. BRYSON

recalled, testified as follows:

#### Direct Examination

(Continued)

By Mr. Buell:

Q. I take it then the cruise that was mentioned at that Board of Directors' meeting was the only cruise on the property that you had any knowledge of?      A. It is.

Q. At the time Mr. Smith wanted the \$25,000



(Testimony of Walter L. Bryson.)

check as a down payment on this Lost Lake property did you feel that the company [1945] had enough information to act upon the offer of the Parkers at that time?

A. The company did not have enough information to close the deal.

Q. What additional information would you have wanted?

A. We would have wanted to have known what the definite cruise was, what it would cost to log, what it would cost for transportation. We would want to know about rights-of-way. There were a great many items we would wish to know before ever taking any action to purchase.

Q. Is the Mr. Roy Kenny who made that reconnaissance cruise, is he still associated with or working for your company?

A. Not at the present time.

Q. Did he turn over his documents and data pertaining to the timber that he cruised, to your company when he left?

A. That had to do with us, yes.

Q. Have you looked for or had any of your employees of the company search for any data or files of your company pertaining to the Lost Lake property of the Parkers?      A. We have.

Q. Have you also looked through Mr. Kenny's files?      A. We have.

Q. Did you bring with you all of the documents that you have?      A. I have. [1946]

Q. Will you hand those to the bailiff, please.

(Testimony of Walter L. Bryson.)

(Two documents, information on cruises by Roy Kenny, marked Plaintiff's Exhibits 95 and 96 for identification.)

Q. (By Mr. Buell): Going back just one minute, Mr. Bryson, did your company ever acquire any of the additional information that you just mentioned that you would have wanted to have had before completing any deal on the Lost Lake timber, to your knowledge?

A. To my knowledge, no.

Q. Mr. Bryson, Exhibits 95 and 96 are two documents that you just exhibited among the documents that you just produced, and one of them, Number 96, appears to be a report of a cruise, and would you state where you found the document, Number 95?

A. Mr. Roy Kenny kept a separate file for all the accumulated information on cruises and other information that had to do with timber that the Multnomah Plywood Corporation might be interested in purchasing, and that file was turned over to us after his termination of services for the Multnomah Plywood, and this document was among the papers in the file.

Q. In the Kenny file?

A. Roy Kenny file.

Q. Number 96 is apparently the original of Mr. Kenny's cruise of which a copy is also in evidence so we will not offer that. I just wanted it marked so we could exhibit it to counsel.

We will offer Exhibit 95 in evidence. [1947]

(Testimony of Walter L. Bryson.)

Mr. Buell: I have no further questions.

The Court: Mr. Jaureguy?

Cross-Examination

By Mr. Jaureguy:

Q. Mr. Bryson, did Mr. Smith have any particular reason why he thought there ought to be an earnest money or payment down on this Lost Lake property?

A. It appeared that Mr. Smith was anxious to close a deal with the Parkers.

Q. Did he give any particular reason for it? Do you mean to close the deal or cinch a deal?

A. To cinch a deal, I will put it that way. Mr. Smith apparently had been working with the Parkers for some time prior to the Parkers appearing at this Board of Directors' meeting, and the meeting ended by the Board wishing to get a great deal more information. In other words, the Board did not commit themselves.

Q. You mean that is shown in the minutes?

A. That is shown in the minutes, and it was that week, that same week, I am quite sure, that the Parkers were in and that Smith was—had asked me for a check to bind this, but the Board had not approved of the transaction.

Q. I could understand, I understand the reasons why you did not want to give the check, and I was wondering if Mr. Smith gave any particular reasons other than the character of the [1950] sale and what

(Testimony of Walter L. Bryson.)

the, and what appeared to be attractive features of it for thinking that they ought to buy it up as soon as possible.

A. The only thing that I can recall with regard to that was that the Parkers were going on an extended trip.

Q. And he thought that they ought to buy it up before they——? A. That is right.

Q. At least get hold of it before they left?

A. That is right.

Q. Did he say whether the Parkers had asked for a down payment or not?

A. I don't recall that he made that statement to me.

Q. You know about the Bear Creek purchase by Multnomah?

A. Having to do with Mr. and Mrs. Parker?

Q. Yes, purchase of their Bear Creek——?

A. If that is the Nestucca River tract.

Q. I think that is the same one.

A. If the Bear Creek and the Nestucca River tract is the same, Multnomah did purchase the tract from the Parkers.

Q. You did not have any cruise there besides the Kenny cruise and the Smith estimate, did you?

A. That I cannot make a clear statement on. I am not in the timber department.

Q. I see.

A. And if we purchased that tract, that was authorized through [1951] the Board of Directors that we do so.

(Testimony of Walter L. Bryson.)

Q. Subsequent, long subsequent to this transaction Mr. Parker was around and negotiating on at least one other timber matter with the Multnomah? He has been around now and then, hasn't he, still?

A. I think that he has contacted our president, Mr. Johnson, in that regard, but I don't think on any occasion after that that I came in contact with Mr. Parker.

Q. Do you know of any reason why this sale did not go through other than the discovery that the title was not good?

A. I did not make a statement with regard to title.

Q. No, I understand. I am just asking. You have learned, have you not, that eventually it was discovered that the title was defective to this property?

A. I have learned that today, yes, sir.

Q. This is the first time you learned it?

A. That is right.

Q. Was there any other reason that you know of why this sale did not eventually go through, or don't you know anything about it?

A. This deal of the Parkers with Multnomah?

Q. Yes; that is right.

A. I will almost have to repeat myself. The Board of Directors did not authorize the purchase of it.

Q. And so that is the sum total of the [1952] reason? A. Definitely so.

(Testimony of Walter L. Bryson.)

Q. I suppose you knew that Mr. Smith and the Parkers had gone up to your attorneys for the purpose of having the matter drafted into contract form, or did you know that?

A. I am not aware of that.

Q. You knew that Mr. Smith a day or two after the meeting went up to look over the property?

A. I am quite sure that he did, and I think that that was following this meeting.

Q. Yes, and two members of the Board and two logging contractors went up with him; did you know that?

A. I can't recall for sure for certain, but I think there was at least one other Board member went up there.

Q. Thank you very much, that is all.

Mr. Ryan: I have no questions.

Mr. Krause: We have nothing.

Mr. Buell: Nothing further.

#### Examination by the Court

Q. When did Mr. Smith cease to be a timber buyer for the Multnomah Plywood?

A. I think it was only a short time after this had been presented to the Board.

Q. Was there any correlation between his termination and this deal, any connection?

A. I think not. [1953]

Q. You seem to indicate that there might have been something improper here, and I just wanted



(Testimony of Walter L. Bryson.)

to know if that was true, or did you want to give that impression?

A. No, I did not. I am only trying to make accurate statements and trying to qualify myself. I recall this, if I may add, that at the time that Mr. Smith decided to work in the plant, and he was an experienced sander man, and that is the job that he took in the plant, that Mrs. Smith had been ill for quite a period of time. Timber buying took him out of town a considerable time, and I think that she would—she objected to that a little and would rather have him working right at our plant. At least that is what he did.

Mr. Jaureguy: You did not mean to give the impression here in court that you thought there was anything improper in the actions of Mr. Smith or of Mr. Parker or of Mr. Kenny or of the members of the Board?

A. I did not.

Mr. Jaureguy: Thank you very much.

Mr. Buell: Nothing further.

The Court: That is all.

(Witness excused.) [1954]

## LYLE A. CUMMINGS

recalled, having been previously sworn, testified as follows (rebuttal testimony):

## Direct Examination

By Mr. Buell:

Q. Mr. Cummings, I neglected to ask you when you testified the other day whether or not you marked out the plots that you actually cruised and counted in connection with your timber cruise of the Lost Lake property involved in this case?

A. Yes, we make a regular system of marking by staking the center of each plot.

Q. Were those stakes left in the ground?

A. Yes, they were. We either drive a stake and mark on the stake or smooth side of a tree and mark on that to indicate the plot center.

Q. So that it would be possible for some other timber cruiser to go back over the property and check your work; is that correct?

A. Yes, it is. We feel that it is advisable to leave a record there so that it can be, in fact, audited if necessary. [1955]

\* \* \*

LOIS PARKER

recalled, having been previously duly sworn, was examined and testified as follows (surrebuttal testimony):

Direct Examination

By Mr. Jaureguy:

Q. You heard the testimony of Mr. Abraham in which, while he did not seem to recall very well, he thought that the conversation that he had in which he told what Mr. Winans said about a defect was while you were still in the court house. Will you explain just when and where that conversation took place?

Mr. Strayer: That is objected to as repetitious, not proper rebuttal.

Mr. Jaureguy: Oh, yes, that is correct. The last point is because I neglected to ask her about that when she was on the stand. I did not put her on the stand and ask her that in our case in chief, and they have put Mr. Abraham on before that so I would like permission now to ask her because that was after—your Honor will recall the circumstances under which he testified, and that is that he admitted a few days before he had told me that he had no recollection of even telling her, and then he took the stand and said that the notes of the attorneys to whom he had given statements indicated that——

The Court: Didn't Mrs. Parker previously testify that the statement was made to her when she was in Mr. Abraham's office? [1968]

(Testimony of Lois Parker.)

Mr. Jaureguy: That is correct.

The Court: Why is it necessary to put her on again?

Mr. Jaureguy: Whether or not his testimony in any way has caused her to change her mind on the subject. Well, I will ask the question whether or not his testimony in any way makes you change your mind as to when and where that conversation took place?

The Witness: No, I have not changed my mind.

Q. You remember that very definitely?

A. Yes.

Q. And you also remember definitely that you went up to see him later and talked to him about it, and he said that he had no recollection about that? A. That is right, he did.

Mr. Strayer: I do not want to be captious, your Honor, but it seems to me this is all improper rebuttal and all repetitions.

The Court: Also leading.

Mr. Strayer: Yes, it is leading.

Q. (By Mr. Jaureguy): Now, were you present at any of the conferences when the attorneys were present that you had learned of the defect of title in which a settlement was being discussed?

A. Yes, I was present at one conference.

Q. At one of them, and where was that? [1969]

A. In Mr. Buell's office in Portland.

Q. And who else were present?

A. Mr. Dwyer and Mr. Alstadt, Mr. Francis Marsh, my husband, Mr. Buell, and myself.

(Testimony of Lois Parker.)

The Court: Who was that last one?

The Witness: Myself.

Q. (By Mr. Jaureguy): What happened when you went in there?

A. I don't remember who greeted us, but Mr. Marsh was given a copy of a settlement or proposed settlement, and we were shown to another office.

Q. You and who else?

A. My husband, Mr. Marsh, and myself.

Q. What happened in there?

A. Well, he read the settlement over and one or two things he asked us, and he said that it was not satisfactory to him.

Q. You say he read it over. Do you mean he read it all to you?

A. Oh, no, he was reading to himself, and he said it was not satisfactory, some things would have to be changed.

Q. What portions did he explain to you, if any?

A. I don't believe he explained any to us.

Q. Did he explain to you how much was to be paid you and when and that they wanted you to sue?

A. Well, yes, I think he told us all about that, and we still had to sue someone to get any amount of money, and I have [1970] forgotten what the amount was, now.

Q. Well, you were to get some money before you brought a suit?

A. No, the agreement was that we were to allow a suit to be brought in our name, and then we would

(Testimony of Lois Parker.)

get a certain sum of money, and at the final ending of the suit, I think it was when probably a decision was given, we were to get the balance of the money.

Q. When a decision was given?

A. Yes, and there was a definite amount of money held out as Mr. Buell told me to be sure that we did not take a trip, that we would have to be present.

Q. Did you and Mr. Marsh and your husband go into the other room where the rest of them were?

A. I don't recall if they were there when we went in or not, but ultimately we were all seated, and Mr. Dwyer and Mr. Alstadt, Mr. Buell, Mr. Marsh, my husband and myself were there.

Q. Then what happened?

A. Well, the first thing we talked about was the fact that they had gone to our banker and suggested that we didn't pay.

Q. That you didn't pay Mr. Winans?

A. Yes.

Q. How did you happen to talk about that?

A. Because we were angry about it.

Q. What did they say about that? [1971]

A. Well, they finally said well, they were very sorry, but I don't think they were.

Q. That last can be stricken. They said they were sorry anyway. Then did you and your husband refuse to sign that contract or refuse to accept that contract as a final settlement?

A. Well, I don't know whether we refused that day or whether Mr. Marsh said we would go home



(Testimony of Lois Parker.)

and do something about it. I really don't recall, what we—but we definitely did not sign it that day.

Q. What reasons did you give, if any, for being dissatisfied with signing a contract with them?

A. Well, it just seemed to us that we did not have to sue to collect any money under the title policy, and that is the reason we gave.

Q. Your feeling of antagonism on account of their talking to your banker the way they did, did that have some bearing on it, too?

A. Well, it certainly did.

Q. Did you tell them so? A. Yes, I did.

Q. Later on there was another contract sent down to Mr. Marsh. Do you know whether you ever saw that?

A. I don't recall whether I ever saw any further one or not. [1972]

Q. Did you read either of these proposed contracts yourself or have them read to you by anybody?

A. I can't recall that I did. I don't know now whether I did or not.

Q. At this meeting that you refer to was there any discussion in that meeting as to whether the Winans knew about their defective title when they sold the property to you?

A. Well, it didn't come up as a discussion. It came up as a statement that they knew all about it, and it was crooked, and that they knew it when they sold us the property.

(Testimony of Lois Parker.)

Q. Who made that statement?

A. Mr. Buell.

Q. Did they do anything to convince you that that was crooked?

A. Yes, my husband objected and he said that he didn't think so, that he knew Miss Winans, and he didn't think so, and Mr. Alstadt said to him, "Jim, bring out the file," and so he brought out his file. It had a letter in it where Miss Winans had written to the other abstract company asking them for a settlement or some money on a title policy that she had.

Q. Was that a surprise?

A. I certainly knew of no such a thing before.

Q. At any time up to that time had you known that the Winans knew about this defective title when they sold the property to you and your husband, or your husband?

A. No, I did not know about it. [1973]

Q. That was the first information you had on the subject?

A. Other than what Mr. Abraham told me that there had been a defect in the title.

Mr. Jaureguy: You may take the witness.

Mr. Ryan: I have no questions.

Mr. Krause: I have none.

#### Cross-Examination

By Mr. Buell:

Q. Do you mean, Mrs. Parker, that Mr. Parker did not tell you following the conference that he had with Mr. Dashney, Mr. Alstadt, and myself that

(Testimony of Lois Parker.)

Ethel Winans had collected a prior loss against another title company?

A. I don't recall any conversation with my husband, and I never heard tell of such a thing until I saw it in your office, and I don't believe that he ever saw such a paper.

Q. Didn't he tell you that he had agreed to sue at that first conference that he had with me and Mr. Alstadt?

A. Yes, he certainly did tell me he had agreed, and I disagreed immediately.

Q. You did not want to sue?

A. I certainly didn't, and I still do not.

Q. But he did not tell you anything at all about the basis of the suit being that the Winans family knew all about the defects in the title and had not disclosed it to you?

A. He certainly didn't. He told me it was a suit to put the [1974] property back in the Winans, for you to get the money from them, and we were to have the money from you. Now that is the kind of suit I understood it was to be.

Mr. Buell: I have nothing further.

The Court: That is all.

Mr. Jaureguy: That is all. [1975]

\* \* \*

## FRANCIS E. MARSH

a witness produced in behalf of the defendants Parker, having been first duly sworn, was examined and testified as follows: (Surrebuttal Testimony.)

## Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name and residence, please?

A. Francis E. Marsh. I reside at McMinnville, Oregon.

Q. And your occupation?

A. Attorney at law or lawyer.

The Court: One of the better lawyers.

Q. (By Mr. Jaureguy): Are you a member of the firm of Marsh, Marsh and Dashney?

A. That is right.

Q. That is a firm in McMinnville?

A. Yes.

Q. You have practiced there for some little time?

A. Since 1935.

Q. Prior to that you were in Portland?

A. That is right.

Q. With the firm of Wilbur, Beckett and Oppenheimer? A. For five years.

Q. There is no question about Mr. Marsh's ability, and he has been here for many, many years practicing in this court.

Q. (By Mr. Jaureguy): Do you know the defendants Chet Parker and Lois Parker in this [1981] case? A. Yes, I do.

(Testimony of Francis E. Marsh.)

Q. Have you ever acted as attorney for them?

A. Oh, quite a number of times.

Q. Did they consult you some time prior to September 20, 1951, with respect to a possible controversy or claim against the Title and Trust Company on a title insurance policy involving some property at Lost Lake? A. Yes, they did.

Q. Did your firm, members of your firm represent them thereafter throughout a series of conferences with representatives and attorneys of the Title and Trust Company? A. Yes, we did.

Q. Could you tell us about when the first of those conferences took place?

A. Well, I reviewed my correspondence, and as far as I can tell, the first conference was on the 20th day of September, 1951.

Q. You have some memorandum there?

A. Yes, well, it is just——

Q. I take it there will be no objection.

A. I think I have it in mind.

Q. You say you first thought it was on the 20th of September? A. Yes.

Q. Where was that held?

A. In my office. [1982]

Q. Who were present?

A. Mr. Alstadt and Mr. Dwyer and Mr. Buell representing the Title and Trust Company, and myself, and I think Mr. Dashney of our office was there for a short time.

Q. Was Chet Parker there?

A. Yes, Chet Parker was there.



(Testimony of Francis E. Marsh.)

Q. Are you certain Mr. Buell was there on that first occasion?

A. No, I am not very certain because there was—a few days later on the 25th I know that Mr. Buell was there on the 25th. It could have been Mr. Alstadt and Mr. Dwyer. Let me check, and I can tell you.

(Refers to document.)

On the first occasion it was Mr. Alstadt and Mr. Dwyer and Mr. Parker and myself and possibly Mr. Dashney.

Q. Will you tell us generally what took place at that meeting?

A. Well, it was a general conversation relative to the condition of the title to some timberland in Lost Lake in Hood River County.

Mr. Alstadt explained to Mr. Parker and myself there is a defect in the title to one of the pieces of the property, and I do not recall whether it was Lot 1 now or Lot 2, but it was one of the pieces that title was good and on the other piece the title was defective, and he explained to us why the title was defective in that it was formerly school land; that it had not been surveyed, and some of the records in the state capitol [1983] in Salem had been destroyed in a fire, and the government apparently was claiming that the title to that property was still vested in the government and that they could not convey good title to Mr. and Mrs. Parker, and that was generally the conversation. He went into, with quite



(Testimony of Francis E. Marsh.)

a little detail at that time as to why the title was defective, and there was some more conversation about what to do about it, trying to rescind the deal with Mr. and Mrs. Winans or the Winans—I have forgotten just which Winans were interested in it—and we talked for an hour or so in the office there in the afternoon, as I recall it.

Q. That about covers?

A. Well, I presume there was a lot more to it, but I cannot remember.

Q. Would you say that there was any reference at that meeting to a prior policy issued by Pacific Abstract and Title on which there had been a payment?

A. Yes, as I recollect it, it was either at that meeting or the next meeting, but I feel quite positive that it was at the first meeting, I think Mr. Alstadt had some of the records from the old Pacific Abstract Company that formerly had an office at Hood River and showed me and the rest of us the defects there that had arisen in the years before and explained that the records in the Hood River office had been transferred to the Portland office and that the party now in charge of the Hood River [1984] office for the Title and Trust Company was not in a position to find this change of the title that had been prepared by the Pacific Abstract Company. I think he went into that just as a matter of conversation.

Q. Then do you recall when the next meeting was?

(Testimony of Francis E. Marsh.)

A. The 25th day of September, as near as I recall.

Q. Who were present then?

A. Well, Mr. Buell and Mr. Alstadt, and during the course of the meeting my brother was there, Eugene Marsh, and Mr. Dashney and myself, and I—it is possible that Mr. Parker was there, too, but I'm not positive about it.

Q. I think probably the others have agreed that Mr. Parker was not there at that time.

A. I do not recall him being there, but it might have been that he was.

Q. What took place there, anything different than the first one, or what was advanced then?

A. Well, at the first meeting, as I recall it, we were hopeful or all of us were hopeful that there might be some way to perfect the title, let us say, to, is it Lot 1 or is it Lot 2 that is involved—Lot 2, I believe, by applying to some proper authority in the federal government trying to perfect the title, and when they came back on the 25th Mr. Buell and Mr. Alstadt apparently had determined that whatever steps could be taken in that direction would take so long that it would not bring [1985] about any effective result, and so they abandoned, apparently they said they had abandoned that procedure, and they wanted to know if they could not work out some process with the help of Mr. and Mrs. Parker to bring some kind of a lawsuit against Winans to rescind the contract, to try to make an agreement

(Testimony of Francis E. Marsh.)

with Parkers there to carry this matter out, and that was the gist of that conversation, as I recall it.

Q. Then the next meeting?

A. Well, the next day, which was the 26th day of September, I left on a deer hunting trip, and I was not in the office until the 8th day of October, but during the meeting of the 25th it was arranged between Mr. Buell and Mr. Alstadt that in the event that something could be worked out that Mr. Dashney would take care of it. I think that we were to get in touch with Mr. Parker and see what could be done, and some time between the 25th of September and the 8th of October when I returned some negotiations at least had been had, and Mr. Dashney took care of that part of it, and I know—I have no personal knowledge just what took place except what I have been told.

Q. Then did you attend any meeting after that?

A. Yes, I called Mr. Buell on the 11th of October, and we arranged a meeting in Portland for the afternoon of October 12 in Mr. Buell's office, and Mr. and Mrs. Parker and I met at [1986] Mr. Buell's office some time around 1:00 o'clock as I recall it, or 1:30 on the afternoon of October 12. As I further recall, we had an agreement, a written agreement there, that Mr. and Mrs. Parker and I went over, and then finally we had a meeting with Mr. Buell and I think—I can't recall—I think Mr. Alstadt was there, and I have a feeling that Mr. Dwyer was there, but I'm not positive about that. That is my recollection.

(Testimony of Francis E. Marsh.)

Q. When you and Mr. and Mrs. Parker went over the agreement did you read it out to them, or did you just explain the principal provisions?

A. Well, I don't recall. I can't remember though we went over it pretty carefully, but I am not sure whether we read it in detail or not.

Q. Then did you say that you had some changes you suggested?

A. Yes, if I could see the one that we were working with I think I could tell you what changes were suggested.

The Court: It is Number 9, I think.

Mr. Jauregui: There are two of them, your Honor.

The Court: Seven, eight and nine. There were three. Eight is the one that has the front page missing.

The Witness: Well, Exhibit Number 9, which is an agreement, is the one that we finally arrived at before we left, and either Exhibit Number 7 or 8 was the agreement that had been proposed prior to that time. I think the amount of the payment [1987] was changed from 90,000 up to 110. I think there was some change about the time of that payment. As I recall it, there was a definite time that the 90,000 was to be paid, and then the 110,000 was to be paid within so many days after notice from the Parkers, and I cannot recall all of the changes, but I know that Mr. and Mrs. Parker were not entirely satisfied on the 12th day of October, when I met with them with the agreement that had been pre-

(Testimony of Francis E. Marsh.)

viously prepared, which is apparently either Exhibit 7 or Exhibit 8. And, as a result of that, after considerable conference with Mr. Buell, Mr. Alstadt, and Mr. Dwyer, as I recall, we arrived at this agreement which is now Exhibit 9.

Q. But it was not written that day, was it?

A. No, it was not written that day.

Q. At any time during that meeting did the Parkers protest against entering into any such agreement at all?

A. At first they were provoked because of some investigation that someone from the Title and Trust had made at McMinnville, and they thought it was a reflection upon them, and they were provoked about that. I remember that. They were hesitant about getting mixed up in a lawsuit of any kind though were not—they were willing, apparently, to testify as witnesses, but they felt that they had a title policy and why should they be bothered about lawsuits, and that was one of the other things that was discussed, as I recall it. [1988]

Q. At any of these meetings was there any discussion of negotiations that had gone on in the purchase of the property or the number of times that the Parkers had seen the Winans?

A. Well, the only thing I can remember about that, I feel positive that Mrs. Parker told me and told me in the presence of others that she had never met the Winans, and I have got the impression from that that Mr. Parker had met the Winans



(Testimony of Francis E. Marsh.)

maybe once or twice or three times, I don't know, but that is the impression that was left at those meetings.

Q. That is your best recollection?

A. That is my best recollection.

Q. At any of these meetings were Mr. and Mrs. Parker or either of them shown the correspondence that had taken place between the Winans and the Pacific Abstract and Title Company in 1944?

A. I believe that was at the first meeting when Mr. Parker was not there.

Q. You say when Mr. Parker was not there?

A. Was not there. I think I was shown some of that, but I don't think I read any of it. I think it was just related to me. I don't recall now for sure.

Q. What about the fourth meeting when they were both present?

A. You mean——

Q. In Portland?

A. In Portland. I do not remember; I cannot tell you. [1989]

Q. Do you remember photostatic copies being shown to Mr. and Mrs. Parker and both of them looking at them, or do you have any recollection?

A. I do not have any recollection now.

Q. Was there any discussion in any of the conferences that you had with the attorneys either when Mr. Parker was or was not present about the possible right of the title company against Stegmann?

A. Well, not when I was present that I recall. It might have happened, but based upon the his-



(Testimony of Francis E. Marsh.)

torical background of the title, it was the feeling that the title was defective and that these Winans, whoever they were, may not have known about it and that they had a ground to rescind it, and get their money back, and that was the whole talk all the time.

Q. With respect to the Winans?

A. With respect to Winans.

Q. But do you remember any talk about the rights with respect to Stegmann?

A. Well, the only thing I can recall, I think somebody mentioned it would be necessary to make him party to the case either as a defendant or a plaintiff or something. I cannot recall much talk about Stegmann. There was some talk about—Mr. Alstadt and Mr. Buell asked us what we knew about Stegmann and asked us things of that kind, and they thought for a while he was a relative of Mr. Parker, and we talked a little bit about that, [1990] but I don't remember anything about his legal liability or responsibility being discussed. It might have been discussed. I am just saying I have no recollection of it, didn't take any notes of this meeting.

Q. How long have you known Stegmann?

A. Oh, I have known him six or seven years or more.

Q. They asked you about him, and you explained to them what you knew about him?

A. I told them that I didn't know too much about him except that I knew that he had been engaged in timber transactions with Parkers or I don't know

(Testimony of Francis E. Marsh.)

to what extent, but I did know that, and I think I told them that, and they thought he was related. I told them I didn't think he was. I wasn't sure.

Mr. Jaureguy: You may take the witness.

Mr. Ryan: I have no questions.

The Court: Mr. Krause?

Mr. Krause: I have none.

The Court: Mr. Buell:

### Cross-Examination

By Mr. Buell:

Q. Mr. Marsh, during these discussions that you have mentioned, it was at the least assumed by everybody, was it not, that Mr. and Mrs. Parker had no—received no knowledge or notice from the Winans family about the defect of the title prior to the time that they got their deed? [1991]

A. Oh, yes.

Q. Did you testify that that Exhibit 9 that you have just referred to substantially reduced to writing the terms of an agreement that we had worked out on October 12th?

A. Oh, I think it definitely did.

Q. Then the following Saturday afternoon you contacted me at my home to tell me that the Parkers did not want to go ahead with it?

A. That is correct.

Q. Referring back to the meeting on September 25th as to whether or not Mr. Parker was present, perhaps this might refresh your memory a little. Do you recall that there was some discussion about

(Testimony of Francis E. Marsh.)

his being out of town, and one of the reasons for calling Mr. Dashney in was to attempt to get hold of Mr. Parker as soon as possible and explain to him our proposal about trying to work out some kind of a rescission?

A. That is right, and he was not there that day, I know.

Q. Then still referring to the meeting of the 25th, do you recall that on that day you made arrangements to have a copy of the option and the notice of election to purchase under the option photostated and sent copies up to us?

A. Yes, well, I recall that I had Mr. Dashney take it over right then to have it photostated to send to you. I do not know whether that was on the 20th or the 25th, but at either one of [1992] those days.

Mr. Buell: I wonder if we could get Exhibit 26.

The Court: Mr. Lindsay, what is the number of the exhibit, of the option that was not signed?

Mr. Buell: Is that 74-A?

(Thereupon there was discussion off the record.)

Mr. Lindsay: It is Number 327.

Mr. Buell: Will you hand this to the witness?

(Document presented to witness.)

Q. (By Mr. Buell): Would you examine Exhibits 26 and 327 there, Mr. Marsh, and then advise

(Testimony of Francis E. Marsh.)

us whether or not you can recall any discussion about who it was that exercised the option?

A. I cannot remember any discussion. I know there was some discussion but I cannot recall it. We talked about so many things, never took any notes down. I just cannot recall it.

Mr. Buell: I have no further questions. Thank you, Mr. Marsh.

### Examination by the Court

Q. In each draft of the proposed contract there are some recitals. Will you take a look at Exhibit Number 9? Now, on the 2nd page, about halfway down the page, there is a recital with reference to notice or lack of notice of any defect. Do you see that? A. Yes. [1993]

Q. Did you discuss that with the Parkers. Did they object to it? Do you know whether that was read to them first?

A. Well, you see, we didn't prepare this agreement the day that we were in Portland on the 12th. We did not have time. We did not prepare this agreement on the 12th of October, and so the next morning, which was Saturday, Mrs. Parker called me up, and she was still not satisfied to go ahead with this. All they wanted, they said, "We have got a title policy for \$125,000, and if the title of this tract is bad, why aren't we entitled to our money?" Then possibly a day or two later this came. Now, I don't even know whether the Parkers even read it.

(Testimony of Francis E. Marsh.)

Q. Show him Exhibit 7. Have you exhibit 7 there also?           A. No, I have not.

(Document tendered to witness.)

Q. If you will look on the 2nd page of Exhibit 7 in the identical spot you will see that same recital.

A. This is 8.

Q. All right, look on page 1 of 8, the first page in the middle of the page. That is page number 2. Do you see that recital there?           A. Yes, I do.

Q. Now, look at Exhibit Number 7 on page 2.

A. Yes. [1994]

Q. That same recital appears in all three documents; does it not?

A. Well, yes, if you want my answer, your Honor, I think this, that all through this negotiation there was nobody assumed that Parker ever had notice of any defect prior to the time he got his deed. It never was questioned particularly because the title was defective, and the company issued the policy, and we never got down to that point of questioning whether Parker had knowledge or not, and he probably—and I know that we read these parts, these parts were read to him on 7 and 8. I do not remember any objection to them.

Q. That was not the basis of Parker's refusal to sign the agreement?           A. Not a bit.

Q. Do you recall any conversation that Mr. Buell may have had with the Parkers concerning notice or lack of notice in which the name of Mr. Kenneth Abraham came up?

(Testimony of Francis E. Marsh.)

A. The only thing I know about that, Mrs. Parker and we have discussed with Mr. Buell—now, this will probably be inaccurate but there was some statement by Mrs. Parker to me after the deed had been recorded that Mr. Abraham made some statement that there was a doubt in her mind about the title. Now what the statement was I do not recall.

The Court: Are there any further [1995] questions?

Mr. Buell: I did have one more, your Honor.

The Court: Mr. Buell?

Q. (By Mr. Buell): When Mrs. Parker called you on that Saturday, October 13th, wasn't she again at that time pursuing her thought that she couldn't see any reason they could not collect the full \$125,000 on the basis of failure of the title to the forty acres?

A. Yes.

Q. Do you recall during these conferences that you have mentioned as to whether or not both Mr. and Mrs. Parker on occasions they were present affirmatively advised all persons present that they paid the full \$125,000 for the property with the only exception of a refund check of about \$4,700, the exact amount of which they were not certain?

A. Yes.

Mr. Buell: No further questions.

Mr. Jaureguy: No further questions.

The Court: That is all.

(Witness excused.) [1996]



WILLIAM H. DASHNEY

a witness produced in behalf of defendants Parker, having been first duly sworn, was examined and testified as follows: (Surrebuttal Testimony.)

Direct Examination

By Mr. Jaureguy:

Q. Could you give us your name and address?

A. William H. Dashney, McMinnville, Oregon.

Q. You are a partner of Eugene Marsh?

A. Yes, sir.

Q. Francis Marsh, and Francis Marsh who was the last witness?

A. Yes, sir.

Q. How long have you been practicing law?

A. Since 1935.

Q. As a member of that firm, did you participate in any of the conferences that took place between and including September 20th to October 12th between members of your firm, Mr. or Mrs. Parker, or both of them, and representatives or attorneys of the Title and Trust Company?

A. As I recall, I participated for a short while in the September 25th conference, the second one. I don't believe I was, as I recall, I don't believe I was in on the first one.

Q. The second one, was that the one where—or what is your recollection on the first conference that you attended whether Mr. Parker was present?

A. I don't believe he was. [1997]

Q. Or Mrs. Parker? A. No.

(Testimony of William H. Dashney.)

Q. What was the general nature of the discussion at that time?

Q. All that I distinctly recall at that time is the fact that I took the option and the exercise of the option down and had them photostated. I was just in for a short while.

As I recall, Mr. Eugene Marsh and Mr. Francis Marsh were having most of the discussion with the parties from the Title and Trust Company.

Q. Do you have any—well, I will put it this way. Do you have any recollection of anything that took place at that conference other than what Mr. Francis Marsh has testified to? A. No, sir.

Q. Or do you have any corrections to make to anything he said? A. No, I do not, sir.

Q. Then you were present at another conference, were you?

A. Yes, I was at the one when Mr. Marsh was away hunting, and Mr. Alstadt and Mr. Buell and Mr. Parker were there, and I believe that was the 27th of September.

Q. Will you tell us what happened at that conference?

A. Well, at that time they had asked me to get Chet Parker in so we might discuss some sort of an agreement that might be entered into between him and Mrs. Parker and the Title and Trust [1998] Company.

I do not recall, but I believe that Mr. Buell had a rough draft of an agreement at that time. I am not positive about that. We discussed it quite at

(Testimony of William H. Dashney.)

length about the question of the two pieces of land, and I recall that—I believe Mr. Parker had had some valuations of his own, \$90,000 on one piece and \$35,000 on the other, and he was justifying those valuations to Mr. Buell and Mr. Alstadt, as I recall, at that time, saying that the timber, there was more timber or something on the one on which the title was not good. Then he had apparently satisfied them as to the value of the timber, that it was there on the tracts, and then we started talking about what should go in the agreement and what should be paid and when it would be paid. I recall that they agreed that upon the execution of the contract, as I remember it, they were going to pay them \$10,000 and the balance at the time any contemplated litigation was terminated.

Mr. Parker at that time said, “Well, sometimes these things drag along in court a long while, and I would like to have a definite time as to when I was going to get my money.” They said that he would get it by January, by the end of January of 1952, as I remember, and that Title and Trust would pay it or they would put it in escrow down in the bank, and I remember I assured Mr. Parker that, in my opinion, Title and Trust was worth \$110,000 or whatever the balance was, and if they signed the agreement, why, they would pay it. Mostly that day we talked [1999] about that agreement.

Q. Did you attend any other conferences with them?           A. No, sir.

Q. At either of those conferences was there any

(Testimony of William H. Dashney.)

discussion with respect to the negotiations that the Parkers or either of them had had with the Winans in connection with the purchase or the number of times that either or both of them had seen the Winans?

A. I don't recall any discussion of that nature. There might have been, but I just don't recall it.

Q. You were not, of course, present at any of the conferences where there was any—other than what you have testified to, any objection on the part of the Parkers to signing an agreement where they had to sue, or you were not present where they were concerned about investigations being made, anything of that kind?

A. No, not at the time. At the time of the meeting on the 27th I know we were explaining, Mr. Buell and I were both explaining to them the subrogation rights of the Title and Trust Company under the policy and that a suit would have to be brought in the name of Mr. Parker, and they asked him to execute a deed so they could tender it back, and while, at that time Mr. Parker said that he preferred to have them bring the suit in the name of the Title and Trust Company.

Q. Did he give a reason for that? [2000]

A. Oh, he said he just didn't want to be tied up in a lawsuit or litigation, that he was a busy man and had several lumber deals pending at the time.

Q. At either of these conferences do you recall whether there was any discussion as to the legal

(Testimony of William H. Dashney.)

situation as between the Parkers or the Title Company and Stegmann?

A. No, other than it was mentioned at that meeting that it would no doubt be necessary to make Mr. Stegmann a party defendant in a suit because the Title and Trust Company, if there was a chance to have a rescission and get their money back, they wanted it back.

Mr. Jaureguy: You may take the witness.

The Court: Mr. Ryan?

Mr. Ryan: I have no questions.

The Court: Mr. Krause?

Mr. Krause: I have none.

The Court: Mr. Buell?

### Cross-Examination

By Mr. Buell:

Q. Mr. Dashney, do you recall at the conference on the 27th Mr. Parker was there and that after we finally reached a tentative agreement or verbal agreement to go ahead and settle and sue—or rescind the transaction, that we explained to Mr. Parker in general terms what the basis for a suit for rescission against the Winans family would be? [2001]

A. Yes, I believe we did, Mr. Buell.

Q. Do you recall a discussion and your making a little investigation of your files to determine whether or not there was any basis for bringing suit in federal court based upon diversity of citizenship?

A. Yes, I do recall that. Mr. Parker—I was



(Testimony of William H. Dashney.)

probating his mother's estate, and he being one of the heirs, he was shown as a resident of Vancouver, Washington, in that estate, as I recall.

Q. Then referring to the valuation of the property, do you recall Mr. Parker advising the three of us at that time that he was satisfied with the value of the smaller tract at \$35,000 just as he had it segregated in that assignment of option that he had?

A. Well, I do recall that he was satisfied that there was at least that much value there, yes, and it was my understanding or my recollection that he was intending to contend that there was more value there than that but that he was justifying this sale that he had on that piece of paper that he had.

Q. Do you also recall whether or not he stated whether he would be perfectly happy to retain the tract to which he had good title at the valuation that he placed on it and settle for the failure of the title on the larger tract for the \$90,000 that he had allocated to it? [2002]

A. I just do not recall whether he agreed on that or not, Mr. Buell.

Q. With regard to the values that you mentioned that he explained generally how he had arrived at his values and based upon the timber on the property, however, there were not any—he did not produce any checks or evidence of payment at that time, did he?           A. No, sir.

Q. Do you recall any discussion that afternoon



(Testimony of William H. Dashney.)

at all as to the part that Mr. Stegmann had played in this transaction?

A. I just do not understand what you mean, Mr. Buell. How do you mean, what part he played?

Q. Well, there was an assignment of the option from Mr. Stegmann to Mr. Parker? A. Yes.

Q. Do you recall any further discussions that afternoon as to whether or not Stegmann had had anything else to do with the purchase of the option by Mr. Parker?

A. No, it was my understanding from that that Mr. Stegmann had found it, he had sold it to Parker, and Parker had paid him \$25,000 for the option, and that was it. I believe that Stegmann—there was something about Stegmann helping him run some lines, I believe, on the property. I am not sure about that, but I do recall that in that proposed agreement in addition [2003] to the price for the timber you were to—the Title and Trust Company were to agree to reimburse him for our attorneys fees and his costs of cruising or surveying the timber, and at that time I think he said that he spent some time up there running some lines or had had them run. I can't remember which.

Q. Do you recall any conversation between myself and Mr. Parker relative to whether or not Mr. Paul Winans had made any specific representations to Mr. Parker as to the condition of the title?

A. I do not recall such a conversation.

Mr. Buell: I have no further questions.

Mr. Jaureguy: Nothing further.

(Testimony of William H. Dashney.)

Mr. Ryan: No questions.

The Court: That is all, Mr. Dashney. You are excused, you and Mr. Marsh both.

(Witness excused.)

Mr. Jaureguy: Call Mr. Parker. [2004]

CHET L. PARKER

recalled, having been previously sworn, testified as follows: (Surrebuttal.)

Direct Examination

By Mr. Jaureguy:

Q. Do you remember the occasion, Mr. Parker, when you and Mr. Stegmann, and, I think, one or two others about August 27th, went up to Lost Lake, and Mr. Winans was not with you? A. Yes.

Q. Tell us what took place when you came to Winans? You have heard Mr. Winans testimony about he wanted to go, and you said it was not necessary or something like that. Do you remember what that conversation was?

A. Well, all I remember is that we stopped to get him to go along with us and that was the purpose of stopping, to get him to go along with us, and he had other stuff to do with his housing. He had something to do with housing or had to go to Hood River, or something, and I think if we could wait until after lunch or something, why then he would go along with us. The purpose for stopping was to get him to go along.

(Testimony of Chet L. Parker.)

Q. Do you have any recollection as to how you were dressed that day?

A. No, I was in my work clothes, and I had on staked-off overalls, and either I had my cork boots on then, or else I had my old pair of oxfords, and I had a T-shirt. I wore a T-shirt a lot, a white T-shirt and I either had on a dress hat [2005] or my old tin hat.

Q. One of those, the tin hat was the canvas hat you have spoken of before?

A. Yes, I have had it for many years. It is like an old board, and it was pretty, rather warm weather so I am positive I didn't have a coat on, but it would have been impossible for me to have had a green coat on there because I have never worn one, nor have I ever owned one.

Q. This was a green cruiser's coat?

A. That is what Mr. Winans said, but he is in error.

Q. Were you introduced to Mr. Winans at that time?      A. No.

Q. Or were you referred to by Mr. Stegmann as a surveyor he had brought along?

A. Oh, no, not in my presence, that is.

Q. I think that Mr. Parker has already testified with respect to the conferences that he had attended, but I do want to ask him whether or not at any time at any of those conferences you made the statement that the only time you had met Winans was on the one survey trip?

A. No, I certainly did not make that statement.

(Testimony of Chet L. Parker.)

Q. Do you remember what might have been said?

A. Well, I might have said—I might have said at one time I saw him or something like that, but I certainly did not say the only time I saw [2006] him.

\* \* \*

HERBERT A. ALSTADT

recalled, testified as follows:

The Court: I understand you are being called because there is some doubt as to whether or not there is any testimony here as to why the insurance policy was issued; is that right?

Mr. Buell: That is correct, your Honor.

The Court: All right, go ahead.

Q. (By Mr. Buell): Could you tell us, Mr. Alstadt, why the company went ahead and issued an insurance policy after the Forest Service had called its attention to the defect in the title?

A. Because as we had previously issued a purchaser's policy, we felt that we were not increasing our liability in any way, and we felt that the insured under the purchaser's policy was entitled to that protection.

Mr. Buell: That is all.

Cross-Examination

By Mr. Jaureguy:

Q. That is, it is a general policy of your company, is it not, where a person is purchasing property and he gets a title report and then the pur-

(Testimony of Herbert A. Alstadt.)

chaser's policy and then it is discovered that it is a relatively short transaction where really he should have gotten an owner's policy instead of the purchaser's before, you issue him an owner's policy and have the purchaser's policy surrendered? [2008]

A. That is right. I might add this, that that frequently happens that people get the wrong form of policy to cover their transaction and that the owner's policy is a better policy than the purchaser's policy.

Q. Let me ask you, I don't know exactly where it is in your deposition, but you can probably recall whether you said it or not, but in your deposition when you gave your deposition you apparently had overlooked the fact that you had given a purchaser's policy and said that the reason that you gave the owner's policy is because you had given a title report?

A. That is right, I did overlook the fact that a purchaser's policy had been issued.

The Court: Did you charge any premium for the issuance of the owner's policy?

A. No, we did not because it was all the same transaction.

The Court: That is all. Mr. Ryan?

Q. (By Mr. Ryan): It is your testimony now that the reason you gave the owner's policy with knowledge of this defect is because of your obligations under the purchaser's policy?

A. That is correct, we were obligated under the



(Testimony of Herbert A. Alstadt.)

purchaser's policy. There was no actual change in title.

Q. Were you obligated to insure the face amount of the policy?

A. I do not think we would be, no, unless it was proved that there was a further consideration paid. [2009]

Mr. Jaureguy: I do want one other question just to be safe. Now, you are telling us what you did just by reason of that general policy of the plaintiff's. You had nothing to do with the transaction yourself, as I understand it?

A. I had nothing to do with the transaction, no.

The Court: Mr. Krause?

Mr. Krause: I have not anything.

Q. (By Mr. Buell): Mr. Alstadt, would it have made any difference in what the company had done relative to issuing the owner's policy if the company had known that the Parkers had knowledge of the defect at the time either the purchaser's policy was issued or prior to the time of the issuance of the owner's policy?

Mr. Jaureguy: I object to that as purely hearsay.

The Court: Objection sustained.

Mr. Buell: Nothing further.

The Court: This witness did not have anything to do with it. The question is improper. Mr. Jaureguy?

Mr. Jaureguy: I would like to ask permission to at this time read into the record the numbers of the pre-trial exhibits that I think I will wish to offer.



They are in possession of one of the other attorneys and they are not here, and I wish to examine them first. Numbers 71 and 72-A. If any, it would just be a portion of that. 72, if any, just a portion of that. [2010] 73——

Mr. Lindsay: It is in evidence.

The Court: 71, 72 and 73 are in evidence.

Mr. Jaureguy: Well, they are not all in evidence. I am reading now, I assume that the numbers have not been changed of any exhibits. Some have been added, and I am reading now from the original file.

(Discussion off the record.)

Mr. Jaureguy: 24 is in. It has got a "R."

Mr. Lindsay: "R" after 24?

Mr. Jaureguy: Yes.

Mr. Lindsay: Alstadt's deposition, that is the deposition of Herbert Alstadt, I thought.

Mr. Jaureguy: That is marked with an "R" here.

The Court: Mr. Bishop reminds me that all depositions have been admitted.

(Discussion off the record.)

Mr. Jaureguy: This does not show that 59 is in. If it is not, it should be in. I think counsel will agree with that.

The Court: What is 59?

Mr. Jaureguy: A certified copy of the proclamation placing public lands within the township, creating the Bull Run Timber Reserve.

Mr. Buell: That was offered along with the other. [2011]

The Court: It will be admitted. Will you present it?

(Discussion off the record.)

The Court: Is it given two numbers?

Mr. Buell: No, it is not, your Honor. I have them both being marked as received. If the Court will recall, most of those documents have been, I think, are admitted in the stipulation of the facts. Mr. Ryan had a question.

The Court: I recall the conversation. I am going to admit it now, but if you produce—if you cannot find it now we will find it a little later. I think we have solved one difficulty. Because of Mr. Ryan's objection, I took it under advisement. Mr. Ryan wanted to look at the documents during the noon hour.

Mr. Ryan: That is right, your Honor.

The Court: Do you still have any objections, Mr. Ryan?

Mr. Ryan: No, I have seen them now, your Honor.

The Court: All right, 59 and 60 are admitted.

(Documents previously marked Plaintiff's Exhibits 59 and 60 were received in evidence.)

Mr. Jaureguy: What about 318? Under the stipulation 318 is marked as handwritten notes by Paul Winans as a timber cruise on Lots 1 and 2 and I offer that in evidence.

The Court: Any objection?

Mr. Buell: We object to that your Honor, on

the ground that it is not properly identified, no ability to cross-examine the person who is supposed to have made the alleged [2012] cruise.

Mr. Jaureguy: I would like to call Mr. Winans in and ask him what it is.

Mr. Krause: Well, it is a copy of a county cruise. It is not his cruise. It is a copy of a record in the county assessor's office.

Mr. Jaureguy: When was that record dated?

Mr. Krause: The cruise was made in 1915 or so; was it not?

Paul Winans: Yes, around that time.

The Court: 1950?

Mr. Krause: 1915.

The Court: 1915.

Mr. Krause: And he made a copy of the cruise that they had there in the county assessor's office.

(Discussion off the record.)

Mr. Jaureguy: Where is the original?

Mr. Krause: In the county assessor's office, I suppose.

Mr. Lindsay: We couldn't find it.

Mr. Jaureguy: You could not find the original?

The Court: Objection overruled; it may be admitted.

(Document previously marked Third-Party Defendant's Exhibit 318 for identification was received in evidence.)

Mr. Jaureguy: I do not see anything else that I wanted here.

The Court: Are you all through? [2013]

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I, Gordon R. Griffiths, an official court reporter to the United States District Court for the District of Oregon, hereby certify that at the time and place heretofore mentioned in the caption and index of the foregoing cause I reported in shorthand all proceedings had and testimony adduced in the trial of the said before-mentioned cause; that my shorthand notes were thereafter reduced to typewriting under my direction, and that the foregoing transcript, consisting of pages 1 through 2027, both inclusive, is a true and correct transcript of all proceedings had and testimony adduced, and of the whole thereof.

Witness my hand at Portland, Oregon, this 31st day of December, 1953.

/s/ GORDON R. GRIFFITHS,  
Reporter.

[Endorsed]: Filed January 9, 1954. [2028]

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[Title of District Court and Cause.]

## TRANSCRIPT OF PROCEEDINGS

Friday, March 20, 1953

The Court: Mr. Krause.

Mr. Krause: Your Honor, this is the time fixed for the taking of testimony on the factual matter relating to the extent of services performed by us in connection with this lawsuit for the Defendants

Paul Winans, et al., and the record of expenses, of money expended in connection with the defense.

We have prepared a little memorandum here, copies of which have been given to counsel, and if it is agreeable to them and to the Court—it is to us—to stipulate that if Mr. Lindsay or I were called as witnesses that we would testify that this was a correct statement of services performed [2\*] by us and the hours spent by Mr. Lindsay, myself and other members of our office whose names appear on the memorandum in connection with the case and that that memorandum of expenses incurred was expended by us through our office in paying for the items mentioned here all in connection with this case——

The Court: Are any of these items listed among the expenses items of taxable costs?

Mr. Krause: No, they are not, your Honor. Might I say what they are?

The expenses of investigation, of course, were the costs, actual costs of the members of our office, because all the investigations were made by members of our office. No one was hired to make them. The depositions were our copies of all the depositions taken. Those are not recoverable costs, as I understand. Then we paid the Reporter for portions of a transcript, portions of the testimony, totaling \$54.00, maps and photostats; we paid \$20.97, and our long distance calls in connection with this \$112.41, for a total of \$576.80.

Then our witness fees and recoverable costs we did not include here on the assumption that we

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**\*Page numbering appearing at top of page of original Reporter's Transcript of Record.**



would be allowed costs in connection with the case. Our action against Parkers and Stegmann is a law action, and I assumed that costs would follow the judgment, and that action, of course, was against [3] them.

Then there was Title and Trust's action against us in which they failed, and we would be ordinarily entitled—I think that was in an equity action—we would ordinarily be entitled to costs there.

The Court: Do you want them sworn, any of them?

Mr. Jaureguy: No.

Mr. Ryan: No.

Mr. Krause: Whatever the wish is, if they wish to have either of us on the witness stand to examine us regarding any of these items, we will take the stand.

The Court: What do you figure your time is worth, Mr. Krause? What do you ordinarily charge for your time?

Mr. Krause: Well, the time in court in the Federal Court in such days as we spent here during this case, \$250 a day.

The Court: \$250 for yourself. What do you figure for Mr. Lindsay?

Mr. Krause: Well, we figured \$150 a day, I believe, and on the time of these younger men in the office \$10 per hour. That is what we would charge other clients, and we think it is moderate.

The Court: How much hourly charge, the 175 hours, that includes something more than trial time, does it?

Mr. Krause: Yes, it does. [4]

The Court: You did not break it down.

Mr. Krause: I think we can do that very easily. We were in court 13 days. 50 hours was over and above the time that was put in during the trial days.

The Court: How much of Mr. Lindsay's time over and above——

Mr. Krause: It would be about 125 off of 484.

The Court: About 360 hours. Well, I want to ask this question: Mr. Winans looked like a difficult witness, gregarious. How long would it have taken you if you had a different kind of client?

Mr. Krause: Your Honor, I do not believe that while he is wordy and there were more hours spent with him in ascertaining the facts, that would not amount to very much in this entire record of hours spent by us, and furthermore, it was Paul Winans that was slandered, not Joe Jones, and if Paul Winans is of that type I think that he would still be entitled to his time, whatever that would have amounted to. He himself, of course, spent at least three months of his own time on this, and that was all because of the fact that he was sued in this case.

Mr. Lindsay: I might say in that connection although he may seem like he uses quite a few words, at the same time he makes up for it, I think, almost with help to a lawyer by having a pretty good memory and by the diligent work he [5] performed which saved us from doing that kind of work.

The Court: Of course, I appreciate the fact that there were a lot of depositions taken, and on the

basis of around five hours a day and figured that way, Mr. Lindsay spent close to a hundred days on this one case.

Mr. Krause: There are no five-hour days in there, I don't believe, your Honor, because even the trial days were much longer than five hours, and on those days that we were engaged in trial, we as did counsel for all of the other parties, spent our evenings conferring and preparing for the next day so there were not any five- or six-hour days in any of that, I do not believe.

The Court: Mr. Jaureguy, what do you think?

Mr. Jaureguy: I do not want to make an argument, your Honor, and I will stipulate that if counsel take the stand they will testify as set forth in the memorandum. Heretofore I have argued the merits of the case itself, and we are not here for that so that I am still of the same opinion, of course, that they are not entitled to recover at all. I will say, and I hope I won't be asked to elaborate or argue, I will say I think that both the time they spent and the proposed charges per day are excessive. I think I spent all the time that was necessary for my part of it, and, of course, perhaps your Honor may say if I had spent another hundred hours I might have had a better result. I think my [6] full time is about 375 hours, and I do not think there was a dozen hours of it with anybody else in our office, and I do not care to make any further comments. [7]

[Title of District Court and Cause.]

MEMORANDUM OF EXPENSES INCURRED  
BY THIRD-PARTY DEFENDANTS

Expenses of investigation.....	\$105.40
Depositions—our copies.....	284.02
Reporter for transcripts.....	54.00
Maps and photostats.....	20.97
Long distance calls.....	112.41
<hr/>	
Total .....	\$576.80

(Witness fees not included.)

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[Title of District Court and Cause.]

MEMORANDUM OF LEGAL SERVICES PER-  
FORMED BY KRAUSE & EVANS,  
ATTORNEYS FOR THE THIRD-PARTY  
DEFENDANTS

Study of complaint and initial conferences with various members of Winans family;

Four days investigation at Hood River, Oregon, interviewing witnesses, securing statements, locating documents, etc.;

Preparation and filing motion to dismiss original complaint for lack of jurisdiction and other grounds; argument of motion before court; attendance at various pre-trial hearings before court on jurisdiction and preparation of proposed pretrial order re same; preparation and submission to court of legal memoranda;

Study of answers and amended answers filed by the Parkers and by Stegmann; and preparation of a set of marked pleadings;

Preparation and filing of answer and cross-claims on behalf of the various Winans defendants;

Attendance at and taking depositions of Chet Parker (1 day), Lois Parker (1 day), Walter Stegmann (3 days), Paul Winans (1½ days), Herbert Alstadt (½ day);

Preparation of detailed summaries of said depositions and making indexes thereof;

Preparation and filing of amended answer and cross-claims on behalf of Winans defendants;

Study of pre-trial contentions, issues and requested admissions of Title and Trust Company and of Parker and Stegmann; preparation of pre-trial contentions, issues, admitted facts, and exhibits on behalf of Winans defendants; and attendance at pre-trial conferences before the court re same;

Study of plaintiff's amended complaint, the answer and counterclaims of Parkers and of Stegmann thereto, and of plaintiff's third-party complaint;

Preparation of third-party defendants' answers and claims against third-party plaintiff and against the Parkers and Stegmann; study of answers of Parkers and Stegmann thereto;



Conferences with other counsel and with clients re preparing stipulation of admitted facts;

Preparation of case for trial including trip to Hood River and to Lost Lake to inspect premises, conferences with all witnesses, analysis and summary of exhibits of all other parties, etc.;

Trial of case before court for approximately 13 trial days;

Oral argument of case before court (1 day) and preparation therefor; preparation of points and authorities for court and study of authorities submitted by other parties;

Legal research and preparation of legal memoranda on various matters, including (1) duty of disclosure of an applicant for title insurance; (2) rights of a title insurance company to be subrogated to its insured's rights; (3) United States as an indispensable party to the original action and other related jurisdictional matters; (4) negligence of a title insurance company as barring its right to subrogation; (5) failure of Parkers to rely upon representations as barring fraud action; (6) doctrine of abatement to purchase price; (7) doctrine of merger of contract rights into a deed; (8) bargain and sale quitclaim deed as affording no basis for recovery of purchase price; (9) mutual mistake of title to real property as not ground for relief; (10) commencing fraud action as an election and barring any remedy in nature of rescission;

Hours spent by various members of the office include:

Gunther F. Krause.....175 hours

(Including approximately 13 days  
trial time, 1 day oral argument.)

Dennis Lindsay .....484 hours

(Including approximately 13 days  
trial time, 1 day oral argument, 7  
days depositions.)

Jack Kennedy .....126 hours

Gerald Robinson ..... 68 hours

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Total .....853 hours

[Endorsed]: Filed January 5, 1954.

[MEMO]

NE-NW 40.00

NW-NE 25.88

Sec. 16-1.S.8E.

Ethy-Winans

Hood River County

Chet L. Parker

106 E. 33 St.

Vancouver, Wash.

Phone 4-1951



W. B. Combs

vs.

1. W. R. Winans &
2. Mary Winans, his wife
3. Paul Winans, sgl.
4. Ethel Winans, sgl.

#3203 filed 8-5-46.

Suit to foreclose Mtg. 24/50.

Personal service of summons had on all defts.  
8-6-46.

Sheriff's return filed 8-7-46.

Nothing more in file.

### Description

That tract of land in the County of Hood River and State of Oregon, described as follows:

Government Lot 1 and the Northeast quarter of the Northwest quarter of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian.

Tax Roll	Owner	Amt. of Tax	Assessed Valuation
1925	W. R. Winans .....	\$26.38	\$650.00
26	W. R. Winans c/o Paul Winans .....	26.86	650.00
27	W. R. Winans, et al. ....	24.35	650.00
28	W. R. Winans .....	27.73	650.00
29	W. R. Winans .....	16.16	450.00
30	W. R. Winans .....	10.10	330.00
31	W. R. Winans .....	11.10	330.00
32	W. R. Winans .....	11.07	300.00
33	W. R. Winans .....	9.07	300.00
34-35	W. R. Winans .....	11.40	300.00
36	W. R. Winans .....	12.42	300.00
37	W. R. Winans c/o Ethel Winans ....	12.38	300.00
38	W. R. Winans .....	12.39	300.00
39	W. R. Winans c/o A. B. Combs .....	12.74	300.00
40	W. R. Winans c/o A. B. Combs .....	12.34	300.00
41	W. R. Winans c/o A. B. Combs .....	12.61	300.00
42	W. R. Winans c/o A. B. Combs .....	10.74	300.00



[The above Exhibit 3 also includes a copy of a title report dated August 15, 1951, this being Exhibit D to Plaintiff's Amended Complaint, and also a copy of a purchaser's title insurance policy which is Exhibit E to the Amended Complaint.]



AFFIDAVIT

State of Oregon,  
County of Hood River—ss.

I, Edward Poirier, being first duly sworn, upon my oath depose and say:

That I am the duly appointed, qualified and acting assessor of Hood River County, Oregon; that I have examined my records and my records show that the following described real property, to wit:

Lot One (1) and the Northeast Quarter of the Northwest Quarter of Section 16, Township One (1) South, of Range 8 East, of the Willamette Meridian,

is located in Hood River County, Oregon, and that none of said tract is in Multnomah County, Oregon, though it has sometimes been stated to be located in Multnomah County, Oregon, in error.

Further affiant sayeth not.

/s/ EDWARD POIRIER.

Subscribed and sworn to before me this 30th day of Dec., 1943.

/s/ NEVA M. SINCLAIR,

Notary Public for Oregon.

My Commission Expires:

Original filed.

1892

*Chet L. Parker, et ux., vs.*

File No. 61763

Office of County Clerk, Hood River County

For Recording or Filing: Affidavit.

Hood River, Oregon,

Dec. 31, 1943.

Received From Hood River Abstract and Inv. Co.

One and No/100 Dollars (\$1.00)

Edward Poirier to The Public

/s/ [Indistinguishable.]

County Clerk.

When Recorded, Mail Instrument to.....

8000.00

No. 136

Ethel Winans

Eight Thousand

30th day of December, 1943, at 5 p.m.

Countersigned at Hood River, Oregon, this 30th  
day of December, 1943.

HOOD RIVER ABSTRACT &  
INVESTMENT CO.

By.....

President.

No. 136

HR-37882

The fee simple estate.

Lot 1 and the Northeast Quarter of the North-  
west Quarter of Section 16, Township 1 South, of  
Range 8 East, of the Willamette Meridian, in the  
County of Hood River, State of Oregon.

No. 136

HR-37882

5. Mortgage, given by W. R. Winans and Mary Winans, his wife, to W. B. Combs, dated January 12, 1923, recorded January 17, 1923, in Volume 15 of Mortgage records, page 507, to secure the sum of \$1000.00 due one year after date, with interest at rate of 8% per annum, payable quarterly with privilege of paying note at any interest payment date.

6. Mortgage, given by W. R. Winans and Mary Winans, his wife, to W. B. Combs, dated July 12, 1936, filed November 24, 1936, in Volume 24 of Mortgage records, page 50, to secure the sum of \$541.80, payable on or before 3 years after date, with interest at rate of 8% per annum, payable semi-annually.

7. Judgment, W. R. & Audubon Winans, Judgment Debtors, to Hood River County, Judgment Creditors, docketed June 17, 1943, for Tax Warrant (110) in sum of \$92.48.

8. Judgment, E. I. Winans and A. W. Winans, Judgment Debtors, to Hood River County, Judgment Creditor, docketed June 17, 1943, for Tax Warrant (108) in sum of \$339.12.

9. Personal property taxes assessed against Ethel Winans in sum of \$3.75, for year 1944.

[Pencilled in margin at paragraph 7]: Sat. 6-7-44.

[Pencilled in margin at paragraph 8]: Sat. 6-7-44.

[Pencilled in margin at paragraph 9]: Passed.